1938
24th SESSION
II

REPORT II

International Labour Conference

TWENTY-FOURTH SESSION
GENEVA, 1938

REGULATION OF CONTRACTS OF EMPLOYMENT OF INDIGENOUS WORKERS

Second Item on the Agenda

GENEVA
INTERNATIONAL LABOUR OFFICE

1937

INTERNATIONAL LABOUR OFFICE

GENEVA, SWITZERLAND

BRANCH OFFICES

China: Mr Hai-Fong Cheng, 754 Bubbling Well Road, Shanghai (" Interlab, Shanghai ", *Tel* 30 251.)

France: , 205 Boulevard St-Germain, Paris VIIe. (" Interlab, Paris 120 " *Tel* Littre 92 02)

Great Britain: Mr. M R K Burge, 12 Victoria Street, London, S.W 1 (" Interlab, Sowest, London ", *Tel* Whitehall 1437)

India: Mr P P Pillai, International Labour Office (Indian Branch), New Delhi (" Interlab New Delhi " *Tel* 3191)

Italy: Mr Ugo Ruffolo, Villa Aldobrandini, Via Panisperna 28, Rome (" Interlab Rome ", *Tel* 61 498).

Japan: Mr I Ayusawa, Shisei Kaikan Building, Hibiya Park, Kojimachiku, Tokyo (" Interlab, Tokyo ", *Tel* Ginza 1580)

United States: Mr L Magnusson, 734 Jackson Place, Washington, D C (" Interlab, Washington " *Tel* District 8736)

NATIONAL CORRESPONDENTS

Argentine Republic: Mr Alejandro Unsain, Av Pte Roque Saenz Peña 671 (8º piso B), Buenos Aires Address correspondence to Calle Berutti 3820, Buenos Aires (" Interlab, Buenos Aires " *Tel* U T 35, Libertad 7257)

Austria: Mr Franz Wlcek, Helferstorferstrasse 6, Vienna I (*Tel* R 28 500.)

Belgium: Mr M Gottschalk, Institut de Sociologie Solvay, Park Leopold, Brussels (" Interlab, Brussels ", *Tel* 33 74 66)

Brazil: Mr A Bandeira de Mello, Edificio do Castello, Salle 812, Avenue Nilo Peçanha 151, Rio de Janeiro (" Interlab, Rio "; *Tel* 43-04-55)

Chile: Mr M Poblete Troncoso, Casilla 2811, Santiago (" Interlab, Santiago)

Cuba: Mr José Enrique de [illegible] ajo, Havana (" Interlab Havane ")

Czechoslovakia: Mr Otakar [illegible] IV (" Sulik, 852 Pankrac, Prague ", *Tel* [illegible]

Estonia: Mr A Gustavson [illegible] n, Raua 61, Tallinn " *Tel* 301-48)

Germany: Mr Wilhelm Cl[illegible] Charlotten- burg 4 , (" Claussen, 96 42 [illegible]

Hungary: Mr Geza Pap, M[illegible] -530-17)

Latvia: Mr Karlis, Berza [illegible] lab Riga, Latvia ")

Lithuania: Mr K Strimait[illegible] 8-56)

Mexico. Mr Federico Bach, [illegible] b, Mexico ", *Tel* Ericsson 4-75-31)

Poland: Mme François Sok[illegible] Warsaw ", *Tel* 8-15-65)

Rumania: Mr G Vladesco [illegible] ucureşti III (*Tel* 231-95)

Spain [illegible] (" Interlab, Madrid ", *Tel* 30 848)

Uruguay: Mr Ernesto Ku[illegible]

Venezuela: Mr Rafael Cal[illegible] Caracas ".)

Yugoslavia: Mr L Steinit[illegible] e (" Interlab, Belgrade ".)

REPORT II

International Labour Conference

TWENTY-FOURTH SESSION
GENEVA, 1938

REGULATION OF CONTRACTS OF EMPLOYMENT OF INDIGENOUS WORKERS

Second Item on the Agenda

GENEVA
INTERNATIONAL LABOUR OFFICE
1937

PRINTED BY ALBERT KUNDIG
GENEVA

CONTENTS

INTRODUCTION

At its Seventy-eighth Session, on 6 February 1937, the Governing Body of the International Labour Office decided to place the following question on the Agenda of the Twenty-fourth Session of the International Labour Conference (1938) for first discussion

" Regulation of contracts of employment of indigenous workers "

By so doing, the Governing Body has given effect to the wishes of the Conference as expressed in resolutions adopted at the Twelfth (1929), Sixteenth (1932) and Nineteenth (1935) Sessions The first resolution, that of 1929, emanated from the Committee set up by the Conference for the first discussion of the question of forced labour and requested that the International Labour Office should be instructed to study all other forms of compulsion to labour —" particularly in connection with long-term contracts "—with a view to the question of their complete abolition being placed on the Agenda of one of the next Sessions of the Conference The 1932 resolution reaffirmed that of 1929 and requested the Governing Body to consider the desirability of placing on the Agenda of a very early Session of the Conference the questions of the methods and conditions of recruiting labour and of the terms of labour contracts, the breaking of which involves penal sanctions Finally, in the resolution of the 1935 Conference, the Governing Body was asked to examine the desirability of placing the question of contracts of employment of Native workers on the Agenda of the 1937 Conference

Moreover, it may be observed that, in inviting the Conference to examine the question of Native labour contracts with a view to the drafting of international regulations, the Governing Body is carrying out the programme of action on behalf of indigenous workers which it laid down as far back as 1926 It was in that year that the Governing Body, having appointed the Committee of Experts on Native Labour, decided that the programme of work of the Committee should consist, in the first place, in the study of the groups of problems connected with forced labour and contract labour Subsequently, when the preliminary studies of the International Labour Office and of the Committee of Experts were sufficiently advanced, the Governing Body placed on the Conference

Agenda the questions of forced labour and the recruiting of labour —which latter question the Committee of Experts had found it desirable to separate from that of the terms of contracts of employment—with the result that the Conference adopted the Forced Labour Convention, 1930 (No 29), and the Recruiting of Indigenous Workers Convention, 1936 (No 50)

The Governing Body has followed the same procedure in regard to the question now before the Conference The preliminary study of the problems of the regulation of contracts of employment of indigenous workers by the Committee of Experts on Native Labour [1] has been completed, the conclusions of the experts will be found in Appendix I to this Report The Conference is therefore now asked to examine this question in first discussion, with a view to the adoption in 1939 of international regulations which will carry a stage further the work already done for the protection of indigenous workers

The importance of the question on the Agenda will be apparent to all who have followed recent trends of colonial development It is true that, on the one hand, there has been a tendency in some territories—particularly where labour has become accustomed to seeking wage-earning employment spontaneously—to abandon long-term contracts in favour of short-term agreements, or, in other cases, to substitute for the old type of long-term contract with penal sanctions a looser form of non-penal sanction contract On the other hand, however, the increasing tempo of colonial development is involving an increased demand for labour, and this demand may be expected to become greater as the market for colonial raw materials further expands No doubt the measures now being taken in some territories to economise labour will be extended, but even so the demand for labour may be expected to have important reactions on the use of the contract system

Faced with the danger of a labour shortage, the plantation and mining undertakings which are the main employers of indigenous workers will obviously give more attention than in times of superabundant labour supply to the problem of the stabilisation of their labour forces For this purpose, they may be expected to resort, among other methods, to the increased use of the long-term

---

[1] For a list of the members of the Committee of Experts on Native Labour at the time the Committee was studying the contract question, see Report IV, International Labour Conference, Nineteenth Session, 1935 *The Recruiting of Labour in Colonies and in Other Territories with Analogous Labour Conditions*, p 3

contract, there are indeed already signs of this development in some territories If the policy of the employers and of the administration is to build up a permanent labour force, resident on or in the vicinity of the undertaking, the long-term labour contract will be used as a means of strengthening the ties between the workers and their new habitat, at least in the early years of their employment Where it is not intended to create a permanent resident labour force, the long-term contract is a means of ensuring relative stability by reducing the labour turnover. Further, labour shortage means more use of active methods of recruiting labour, and the expense involved by recruiting naturally causes the employer to prefer a form of contract which enables him to retain the labour recruited as long as possible

In present circumstances, therefore, the problems of the indigenous labour contract remain of great importance, and the pooling of the experience of the countries directly concerned in an international discussion, with a view to the adoption of international regulations in the form of a Draft Convention, would appear to be particularly timely

Until the Committee of Experts on Native Labour undertook, on the invitation of the Governing Body of the International Labour Office, the study of the question of Native labour contracts in preparation for its discussion by the International Labour Conference, the subject had not been examined by an international body for many years, as far as the International Labour Office is aware, the last occasion was the 1912 session of the International Colonial Institute Previous discussions of the conditions of employment of Native labour under contract had also been organised by the International Colonial Institute in 1897 and 1899, but had been limited to migrant labour Many valuable principles—often far in advance of the practice of the time—resulted from these discussions and are to be found in the draft model regulations prepared by the 1899 session of the Institute, and the conclusions of the reporter, Mr Camille Janssen, adopted by the 1912 session [1] These principles, however, were not incorporated in international treaties or conventions, and at present there is no general international instrument in existence relating to the regulation of indi-

[1] For instance, Mr Janssen's conclusions laid down, *inter alia*, the principles that contracts for all terms of service in excess of three months should be in writing, that the length of contracts should be limited to three years, and that employers should be obliged to provide medical assistance and to repatriate workers at the expiry of the contract

genous labour contracts The International Labour Conference, therefore, if it should pass a Draft Convention on this subject, will be breaking new ground as in the case of the other Conventions relating to Native labour which it adopted in 1930 and 1936

The nature and scope of the question which the Conference is asked to examine in first discussion at the present Session will be discussed in Chapter I, which will also give a general account of the law and practice in the matter of indigenous labour contracts in the various territories The subsequent chapters of this Report will be devoted to an exposition of the law and practice in relation to the specific problems of the contract, e g when it should be required to be in writing, its length, its contents, its termination, the repatriation of the worker, penal sanctions Finally, the report will conclude with a draft list of the points on which it is suggested that the Conference should instruct the International Labour Office to consult the Governments in preparation for a second discussion of the question on the Agenda in 1939

CHAPTER I

NATURE AND SCOPE OF THE QUESTION ON THE AGENDA

§ 1 — General Nature of the Question

The " indigenous workers " with which this Report is concerned are primarily the workers employed in tropical and sub-tropical territories by agricultural and industrial undertakings which are owned and managed by Europeans or, if not owned and managed by Europeans, are worked in accordance with European methods These workers are drawn either from the indigenous populations of the colonised territories and neighbouring territories or from certain Asiatic countries, the latter category of workers are deemed to be covered by the term " indigenous workers " in so far as they are employed under conditions similar to those under which workers belonging to indigenous populations are employed

Generally speaking, these indigenous workers do not belong to a constituted wage-earning class They are mostly villagers, agriculturalists, who retain their place in the traditional economic system of their communities, to which they return after a longer or shorter spell of wage-earning employment This employment is in many cases a secondary occupation, undertaken to earn money wherewith to meet needs created by the partial incorporation of their communities in a money economy Their labour is unskilled—becoming at most semi-skilled—and cheap, they are unorganised and defenceless, except in so far as they are protected by the law or by the methods of labour management of their employers

Some account of the ways of obtaining indigenous labour, and particularly of the recruiting systems, was given in the Report

on recruiting prepared for the 1935 Session of the Conference [1] The present Report is concerned with one of the principal systems of employment of indigenous labour—the long-term contract system

The idea of the indigenous labour contract would appear to have been derived in part from the apprenticeship contracts current in Europe—hence the continued use in some Anglo-Saxon territories of the term "indenture", by which apprenticeship contracts have always been known in England—and in part from the laws and customs regulating in Europe the relationship between masters and servants. The main characteristics of the indigenous labour contract were its length, the impossibility for the worker—save in very exceptional circumstances—to liberate himself from the obligations of the contract, and the provision for criminal penalties in case of breach of contract (the "penal sanctions")

In the course of time, however, the indigenous labour contract has undergone profound modifications Designed originally for the sole purpose of enabling employers to keep and control their labour forces, the contract was concerned almost entirely with the obligations of the worker towards the employer—the length of the period he was to serve and which was often as long as five or seven years, the disciplinary rights of the employer, and the penalties for breaches of the contract The contract did indeed stipulate that the employer was to feed and house his workers, but there the protective provisions usually ended as far as the worker was concerned

One of the most important respects in which the contract has evolved has therefore been its transformation into a more truly reciprocal agreement in which the employer assumes obligations for the protection of the moral and material interests of the worker as a counterpart to the obligations of service assumed by the worker The contract now usually contains provisions dealing with rations, clothing, housing, the nature of the employment, the rate of wages and manner of payment, hours of work or the daily task, periods of rest, medical attention, termination of the contract, repatriation, etc , and if these matters are not specifically mentioned in the contract itself they are provided for in the legislation regulating employment under the contract Moreover,

---

[1] See Report IV, International Labour Conference, Nineteenth Session, 1935 *The Recruiting of Labour in Colonies and in Other Territories with Analogous Labour Conditions*

the safeguards for the workers thus provided in the contract or the legislation are guaranteed by the administration, which supervises both the making of the contract and its execution

The other main direction in which the indigenous labour contract has evolved has been that of increasing the freedom of the worker, or rather of limiting and diminishing the restraints on his freedom involved in the contract The length of the period of service for which a contract may be made has been gradually reduced both in the case of foreign contracts—for which alone such long periods as those of five and seven years, mentioned above, were customary—and for home contracts The possibilities of termination of the contract before its legal date of expiry have been extended The range and severity of the penal sanctions have been restricted, in some territories, indeed, penal sanctions have been wholly or partially abolished, while in others new types of non-penal sanction contract have been introduced The most extreme form of reaction against the hardships of the long-term contract has been its abolition by law In other territories, the long-term contract has gone into disuse, owing mainly to the fact that the workers have become accustomed to seeking employment without the intervention of the recruiter and their preference for short-term agreements

In the circumstances prevailing in many territories, however, it would not appear that the abandonment of the long-term contract is within the bounds of possibility, nor, if it were possible, would it necessarily be expedient in the interests of the workers It has been pointed out above that the contract has tended to become more and more based on the principle of reciprocity A striking feature of contract labour legislation is the extent and detail of the provisions for the protection of the workers The legal protection of workers under short-term agreements is far less satisfactory than the protection afforded under contract legislation, and although there is a tendency to correct this situation by the gradual development of legislation regulating the conditions of work of non-contract labour and by the improvements in conditions that are made by employers in order to attract and retain such labour, it remains true that non-contract labour conditions are often less advantageous to the worker than those of employment under contract

A particularly interesting claim that the contract is advantageous to all concerned has been made by Major Orde Browne, who sees in it not only the best means of regulating the labour

on recruiting prepared for the 1935 Session of the Conference [1] The present Report is concerned with one of the principal systems of employment of indigenous labour—the long-term contract system

The idea of the indigenous labour contract would appear to have been derived in part from the apprenticeship contracts current in Europe—hence the continued use in some Anglo-Saxon territories of the term " indenture ", by which apprenticeship contracts have always been known in England—and in part from the laws and customs regulating in Europe the relationship between masters and servants The main characteristics of the indigenous labour contract were its length, the impossibility for the worker—save in very exceptional circumstances—to liberate himself from the obligations of the contract, and the provision for criminal penalties in case of breach of contract (the " penal sanctions ")

In the course of time, however, the indigenous labour contract has undergone profound modifications Designed originally for the sole purpose of enabling employers to keep and control their labour forces, the contract was concerned almost entirely with the obligations of the worker towards the employer—the length of the period he was to serve and which was often as long as five or seven years, the disciplinary rights of the employer, and the penalties for breaches of the contract The contract did indeed stipulate that the employer was to feed and house his workers, but there the protective provisions usually ended as far as the worker was concerned

One of the most important respects in which the contract has evolved has therefore been its transformation into a more truly reciprocal agreement in which the employer assumes obligations for the protection of the moral and material interests of the worker as a counterpart to the obligations of service assumed by the worker The contract now usually contains provisions dealing with rations, clothing, housing, the nature of the employment, the rate of wages and manner of payment, hours of work or the daily task, periods of rest, medical attention, termination of the contract, repatriation, etc ; and if these matters are not specifically mentioned in the contract itself they are provided for in the legislation regulating employment under the contract Moreover,

---

[1] See Report IV, International Labour Conference, Nineteenth Session, 1935 *The Recruiting of Labour in Colonies and in Other Territories with Analogous Labour Conditions*

the safeguards for the workers thus provided in the contract or the legislation are guaranteed by the administration, which supervises both the making of the contract and its execution

The other main direction in which the indigenous labour contract has evolved has been that of increasing the freedom of the worker, or rather of limiting and diminishing the restraints on his freedom involved in the contract The length of the period of service for which a contract may be made has been gradually reduced both in the case of foreign contracts—for which alone such long periods as those of five and seven years, mentioned above, were customary—and for home contracts The possibilities of termination of the contract before its legal date of expiry have been extended The range and severity of the penal sanctions have been restricted, in some territories, indeed, penal sanctions have been wholly or partially abolished, while in others new types of non-penal sanction contract have been introduced The most extreme form of reaction against the hardships of the long-term contract has been its abolition by law In other territories, the long-term contract has gone into disuse, owing mainly to the fact that the workers have become accustomed to seeking employment without the intervention of the recruiter and their preference for short-term agreements

In the circumstances prevailing in many territories, however, it would not appear that the abandonment of the long-term contract is within the bounds of possibility, nor, if it were possible, would it necessarily be expedient in the interests of the workers It has been pointed out above that the contract has tended to become more and more based on the principle of reciprocity A striking feature of contract labour legislation is the extent and detail of the provisions for the protection of the workers The legal protection of workers under short-term agreements is far less satisfactory than the protection afforded under contract legislation, and although there is a tendency to correct this situation by the gradual development of legislation regulating the conditions of work of non-contract labour and by the improvements in conditions that are made by employers in order to attract and retain such labour, it remains true that non-contract labour conditions are often less advantageous to the worker than those of employment under contract

A particularly interesting claim that the contract is advantageous to all concerned has been made by Major Orde Browne, who sees in it not only the best means of regulating the labour

market but also a forerunner of collective bargaining Writing more particularly of East Africa, Major Orde Browne points out that, in the absence of collective bargaining,

"the worker's interests are cared for by the various Governments according as this is considered necessary, and such action as is taken by the Native himself consists mainly of the boycotting of unpopular employment as far as this may be possible, elementary strikes and disturbances caused by specific grievances represent almost the only concerted action Supply and demand alone regulate conditions (except where arbitrary wage-fixing machinery exists) and there is a constant danger of undue advantage being taken by one side or the other, in instances of acute shortage of workmen in the one case or distress among the Native population in the other Wages fluctuate irregularly, and the supply of labour is unreliable, each individual enterprise makes its own bargains, and the worker comes or goes as he feels inclined, or can be cajoled by plausible touts, the whole labour market is erratic and disorganised, and all concerned suffer accordingly

When however, resort to the contract becomes general, conditions are at once much more clearly defined, without any actual organisation, the terms of employment in the various areas will tend to conform, and the Native will learn to rely on his written contract as interpreted by a disinterested official, the more experienced will guard the interests of their ignorant brethren, and it will no longer be so likely that vague rumours of astonishing conditions, either good or bad, elsewhere will upset a whole community of labourers A far closer watch over the fluctuations of the market can be maintained, and any alteration in conditions can be carried out after discussion Realisation of the principle of the bargain is essential for the worker's progress, while he is in a strong position usually, owing to his power of the boycott, he is also much in need of protection in such matters as repatriation expenses, hospital treatment, compensation for injury or sickness, and other advantages, and until he holds a demonstrable agreement whereby some employer is rendered liable for such assistance he is obviously open to exploitation by any unscrupulous person who wishes to shirk obligations The Native frequently fails to recognise this, and consequently avoids any contract, regarding it as being merely an irksome restriction of his own right to suit himself entirely as to how, when and where he works The attitude is comprehensible in the ignorant Native, but progress will be impossible until both master and servant are able to work on a basis of mutually agreed rights and duties "[1]

Whatever may be the relative advantages and disadvantages of the indigenous labour contract and the non-contract system from the point of view of the worker, however, there would appear to be no doubt that the use of the contract may be expected to continue for many years, particularly in certain circumstances

Among these circumstances may be mentioned, in the first place, those in which employers are obliged to spend or advance money on any considerable scale in order to obtain labour, e g in connection

[1] Major G St J Orde Browne *The African Labourer*, pp 73-75

with recruiting, bringing the workers from their homes to the place of employment, repatriation, etc It has indeed been found possible to meet this difficulty and to guarantee employers against undue loss by other means than the long-term contract, e g by such systems as the immigration funds of Ceylon and Malaya and the Registration Office of the East Coast of Sumatra (although this latter system works most efficiently in connection with fairly long-term agreements), but these methods may not be suitable for, or commend themselves to, other territories, and in practice they do not appear so far to have been adopted elsewhere

Another case in which both employers and the administrations concerned have shown a strong preference for the long-term contract is where the policy is to encourage workers from other regions or territories to settle with their families in the areas of employment in order to form a resident wage-earning population, e g the Katanga region of the Belgian Congo and the island of San Tome The argument in favour of the long contract in this case is that it is necessary in order to enable the employers to meet the expenses of bringing the workers and their families to the employment area and of acclimatising them, and in order to accustom the workers to their new habitat It may well be considered that this argument has validity only as regards the initial stages of settlement, but it must be taken into account both in any discussion of the desirability of the contract and in examining the question of the maximum length of the contract—a question with which this Report is directly concerned and which will be dealt with in detail in a subsequent chapter

However, whatever opinions may be held regarding the advantages and disadvantages of the indigenous labour contract, and the likelihood of the persistence, contraction or extension of its use, it is necessary to deal with the contract as an existing institution and to examine how it may best be regulated in order to ensure the maximum degree of freedom and protection for the worker and the maximum efficiency of the system as a mode of employment

The various problems of the indigenous labour contract will be discussed, and a summary of the existing law and practice in the various territories concerned will be given in the succeeding chapters of this Report It will be sufficient here, in order to complete this description of the general nature of the question on the Agenda, to give a short outline of these problems

When an indigenous worker enters into an agreement to serve an employer for a period other than a short period, it is usually

considered desirable that there should be a record of the agreement in order to define the rights and obligations of the parties and to enable them, if necessary, to prove the existence of the agreement In other words, a contract of service for any period exceeding a specified period must be in writing, and the first question to be determined is the length of the period for which the obligation to make contracts in writing should become operative There may also be circumstances other than the length of the period of service which should involve the writing of the contract

If a contract is required to be in writing, it is necessary to determine the particulars which the contract should contain in order to fulfil its purpose, this question will be examined under the heading of the contents of contracts

So as to ensure that every contract required to be in writing is in due form of law and in particular that the worker is a freely consenting party to the contract, administrative supervision is necessary at the time of the conclusion of the contract, the next question is therefore the provision to be made for such supervision

Some legislations require medical guarantee of the fitness of the worker either before the contract is signed or as a condition of its validity This question will next be examined, and will be followed by consideration of the restrictions, if any, that should be imposed on the contracting of women, young persons and children

A problem of outstanding importance is that of the maximum length of a contract of employment It has long been felt that one of the most onerous features of the indigenous labour contract is its length, and although modern law and practice have in many cases reduced the length of the period of service, the question of the maximum length that should be permitted needs examination The disadvantage of a long contract from the worker's standpoint may be tempered by extending the possibilities of termination before the expiry of the period of service specified in the contract, and this aspect of the question will be considered in a later chapter It may also be argued that the objections to binding the worker for a long period lose much of their force if adequate precautions are taken against the contracting of workers in ignorance of the length of the service prescribed On the other hand, a consideration of particular importance is that the employment for which the worker is contracted usually involves his separation from his village during the period of the employment and often from his family, with all the social and economic disadvantages which separation implies It will be suggested in the chapter dealing with this

question that the maximum should be fixed having regard to the desirability of safeguarding as far as possible the freedom of the worker and to the need to shorten the absence of the worker from his home surroundings These points must of course be considered in relation to the circumstances of the employment and the reasonable claims of employers, and it will be indicated that different maxima might be adopted in different cases

Questions relating to the transfer of contracts and their termination, a point to which reference has already been made above, will next be considered These questions will be followed by that of the circumstances in which the contract worker should have the right to be repatriated Consideration will then be given to the question of the conditions under which re-engagement contracts may be permitted on the expiry of original contracts

Finally, the item on the Agenda includes the examination of the question of " penal sanctions " or criminal penalties for breach of contract This is undoubtedly the most difficult question that arises in connection with the regulation of the contracts of employment of indigenous workers The penal sanction is widely held to be repugnant to modern ideas both of law and humanity On the other hand, although there are some outstanding cases of the abandonment of penal sanctions by administrations of territories in which contract employment exists to a considerable extent, many administrations hold that there is no other way of ensuring the fulfilment of contractual obligations by indigenous workers than by means of penal sanctions

In examining the question of penal sanctions, it is necessary first of all to distinguish between the different kinds of offences for which penalties are provided in the various legislations These offences may be broadly divided into three groups failure to perform the services specified in the contract, offences against labour law, and offences against public order and discipline The penal provisions relating to these three types of offences are often contained in the same legislative measures, but it seems clear that only the penalties for the first type of offences can properly be considered to be penal sanctions for breaches of contract, offences against health, safety and police regulations and against rules of discipline are not breaches of contractual obligations even though their punishment is provided for in contract legislation or in the contract itself This matter will, however, be discussed in detail in the chapter on penal sanctions, in which the provisions of the various legislations will be summarised and suggestions made

regarding the lines on which international regulations might be drafted

Before proceeding to the detailed discussion of the several problems outlined above, it seems desirable to give a summary description of the contract legislation existing in the territories concerned This will be done in the second section of this general chapter

§ 2 — The Situation in the Principal Territories concerned

The purpose of this section is to give a general idea of the contract legislation in force in the principal territories in which indigenous labour is employed under contract Incidentally, reference will be made to the definitions of the contract expressed or implied in the different legislations and to certain marginal cases of contracts which may or may not be deemed to come within the scope of the question on the Agenda—a point which will be further examined in the third section of this chapter The present section makes no claim to be exhaustive, on the contrary, its aim is to illustrate by reference to the principal contract systems the general nature of the question before the Conference [1]

BELGIUM

In the *Belgian Congo*, where the development of plantations, mines and public works has led to the extensive employment of Native labour [2], the regulation of indigenous labour contracts is mainly provided for in the Decree of 16 March 1922 This measure lays down the principles on which contract employment is to be regulated, as well as the recruiting of workers who will be expected to conclude a contract when they arrive at the place of employment [3] Provision for the application of the Decree of 16 March 1922 in the various provinces of the Belgian Congo was made in orders issued by the Governor-General, these orders were unified

---

[1] For information on the extent of employment of indigenous labour and on the purposes of such employment, Chapter II of the Grey-Report on " The Recruiting of Labour in Colonies and in Other Territories with Analogous Labour Conditions " may usefully be consulted

[2] According to a statement by the Governor-General of the Belgian Congo on 28 June 1937, the number of Natives in European employment, on 31 December 1936, was 388,187

[3] The Decree of 16 March 1922 has been supplemented and amended by an Ordinance of 11 July 1923, a Decree of 29 May 1931, an Ordinance of 27 January 1930 amended by an Ordinance of 19 May 1932, Ordinances of 10 January 1933, and an Ordinance of 19 July 1934

and simplified by the general Ordinance of 18 June 1930 relating to the labour contract [1]

The Decree of 16 March 1922 is concerned with the hiring of services generally, and applies to the contracts of manual workers, employees and domestic servants The Decree does not specifically define the labour contract However, it is evident from the tenor of its provisions and from the relevant clauses of the Belgian Civil Code that the essential characteristics of the labour contract are (1) that the worker undertakes to hire his labour for a given period to an employer, (2) that the worker undertakes during that period to work under the orders of the employer and in accordance with the latter's instructions, and (3) that the employer undertakes to pay a wage to the worker So defined, the position of the contract labourer is distinguished from the sub-contractor, in that the latter, while he may be said to hire his services to the contractor, does not work under the contractor's orders but is bound only to deliver the results of his labour as prescribed in the contract

The field of application of the Decree includes only indigenous manual workers, employees and domestic servants belonging to the Congo or to neighbouring territories On the one hand, therefore, it excludes European workers from the application of its provisions, on the other hand, the legal protection afforded by the Decree extends to workers from neighbouring colonies who belong to peoples on the same cultural level as Congo Natives The Congo Native is defined as " a person born in the Congo of parents belonging to the indigenous races "

The employer, according to the Decree, may be either a non-Native or a Native who pays taxes other than the Native tax Such a Native is considered to have acquired sufficient education or experience to place him above the general level, the majority of Natives are in an inferior condition in relation to him and it is deemed necessary to provide for their protection when they are in his employment In reality, it is the extent of the economic activity of the Native employer which determines whether or no he is covered by the Decree, since the payment of taxes other than the Native tax is the index of his economic activity [2]

---

[1] The Ordinance of 18 June 1930 has been amended and supplemented by Ordinances of 11 June 1931, 30 December 1931, 12 February 1932, 21 April 1932, 8 September 1932, 6 August 1934, 9 May 1935 and 8 January 1936

[2] The " Native " tax includes a poll tax and a supplementary tax in respect of plural wives The other taxes, which are mainly paid by Europeans, are income tax, a tax on buildings, a tax on land not built upon, a tax on employees and workers, and a tax on boats and other vessels

Contracts for the hiring of services between Natives generally are regulated by the Native customs of the contracting parties

Apprenticeship contracts are not contracts for the hiring of services, but are considered to be a special type of contract which is provided for in a Decree of 11 January 1926 This Decree defines the apprenticeship contract as follows " A contract whereby the colony, or a company or person approved by the colony as suitable to teach apprentices, undertakes to teach, or to cause to be taught by a mandatory in his service, the practice of a specified trade to a person who is a Native of the Congo or of a neighbouring colony, and the said person undertakes in return to perform, until the expiry of the contract, the work which the other party may assign to him for the purpose of learning the said trade "

In the *Mandated Territory of Ruanda-Urundi*, the Decree of 16 March 1922 relating to the labour contract was made applicable by an Ordinance of 15 December 1927, the Ordinance of the Governor-General of 12 June 1930 was also made applicable in the Mandated Territory by an Ordinance of 8 August 1930

GREAT BRITAIN AND DOMINIONS

In the territories administered by Great Britain and the Dominions the contract of service is usually widely defined to cover all arrangements by which a worker of the indigenous population or worker of analogous status agrees to perform labour for an employer The oldest law which will be treated in this Report, the Cape Masters and Servants Act of 1856, defines a contract of service as any agreement, whether oral or written, whether expressed or implied, which any person, employed for hire, wages or other remuneration to perform any handicraft or other bodily labour in agriculture or manufacture, or in domestic service, or as a boatman, porter, or other occupation of a like nature, has made according to law with any person employing such person for hire, wages or other remuneration One of the most recent laws which will be treated in this Report, the Sierra Leone Employers and Employed Ordinance, 1934, more simply but to the same effect considers a contract of service to be any contract, whether in writing or oral, to employ or to serve as a servant for any period of time or to execute any work

In some of the older laws a European servant is not excluded from the definition of the contract By now, however, explicitly or implicitly or by the desuetude between Europeans of such

contract labour relations, the laws are limited to agreements in which the servant is a Native or of analogous race On the other hand agreements under Native custom where both parties are Natives may be expressly excluded, and generally appear to fall outside the practical purview of the legislation In some cases, where economic Native development has profoundly modified custom, the question whether the resulting labour agreements should be regarded as contracts appears to remain a matter of administrative appreciation, although of course in the last resort the courts would decide

The wide definition of the contract does not, however, mean that it will be necessary to examine in this Report all forms of labour relationships between indigenous workers and European or similar employers The general sense of the laws is that, starting with as extensive as possible a definition of the contract, they go on to regulate only some forms of contract engagement and some aspects of contract employment The chief features emphasised are the administrative control of certain engagements, the limitation of the length of contract and special sanctions in the event of breach of the law or of the contract by employer or worker In practice these features are of varying importance While the laws may still reflect older conditions, in some territories contract labour is wholly obsolete, in others only a few workers are covered, in others only certain contract labour features apply to the body of the workers and in yet others such features apply only to a minority of the workers To take the two laws already mentioned, although the definition of the contract is substantially the same in the Union of South Africa (Cape) and Sierra Leone, in the first case the legal provisions govern the system of employment of the body of Native workers, whereas in the second case contract labour, as a system of usually long-term employment with the administrative control of engagements and special sanctions, may practically be said to have disappeared

Geographically the employment of labour under contract is of greatest importance in Africa, and in Africa, by reason both of the numbers employed and of the influence of the legislation on other territories, the centre of greatest importance is the Union

In the *Union of South Africa*, as suggested above, the contract labour system may be said to extend widely in the two dimensions of the features of the system, i e in legal and practical force, and the classes of workers affected Penal sanctions are of general

application to Native workers and long-term contracts subject to administrative supervision are provided for by law and used in practice With the recent increase in mining employment it is probable that 1,000,000 workers in agriculture, mining, industries and domestic service are employed under some form of contract as regulated by one or more of the various laws The contract labour system is thus a fundamental part of the labour economy of the country

The legislation is complicated, account has to be taken of three sets of laws

In the first place, in each Province there are Masters and Servants laws mainly based on the Cape Act of 1856 and amendments Dating from before the Union of South Africa, these laws have not been consolidated, and in each of the four Provinces the relevant law applies generally where the worker is a Native

In the second place, the Union Labour Regulation Act of 1911 covers the whole of the Union of South Africa, having replaced previous provincial legislation Some of the provisions of the Act, notably those concerning recruiting, apply to Natives, a term held to include any member of the aboriginal races or tribes of Africa The greater part of the Act, however, has reference to Native labourers, who are defined as Natives employed upon any mines or works or recruited for labour upon any mines or works The definitions of mines and works are very wide, works including any places where machinery is erected or used and mines including all excavations for the purpose of searching for or winning minerals, together with all buildings, premises, erections and appliances belonging or appertaining thereto Roughly therefore the Act may be said to regulate the recruiting of Native labour and its employment under contract on mines and in industry It is not a substitute for, but a complement to the provincial Masters and Servants laws

Thirdly, the Native Service Contract Act was adopted in 1932 to regulate the position of Natives employed in agriculture in return for farming privileges This is a Union Act, its provisions as a whole, however, do not apply to the Cape Province and some of its provisions do not apply to the Orange Free State The question of principle raised by this Act in the consideration of any international regulation of contracts will be mentioned later in connection with a similar problem in Kenya The workers covered by it are also subject to the Masters and Servants laws

Lastly account has to be taken of the large-scale employment

in the Union of South Africa of Natives from beyond the borders This is of particular importance in the Rand mines, where in 1936 of 319,956 Natives employed, 89,128 were from Mozambique, 49,582 from Basutoland, 8,156 from Bechuanaland, 7,316 from Swaziland, and 3,156 from the Rhodesias and Nyasaland As far as their employment on the Rand is concerned, they are of course subject to Union law Their contract engagement, however, is concluded in their countries of origin, and certain facilities for supervision during their absence in the Union may be granted to their respective governments

In the case of Mozambique Natives the labour supply forms part of an international agreement In 1909, a Convention was signed between the Portuguese and the Transvaal Governments governing the recruiting of Natives in Mozambique for the Transvaal mines This text was superseded by a second Convention concluded in 1928 between the Portuguese Government and the Government of the Union of South Africa The second Convention was amended by an Agreement of 17 November 1934 between the two Governments

By the terms of the Mozambique Convention the Portuguese Government authorises the recruiting of Portuguese Natives within the territories of Mozambique situated south of latitude 22° and under direct State administration for employment in the gold and coal mines of the Transvaal The number of Natives to be recruited was not to exceed 80,000 (which number was raised to 90,000 on 14 March 1936) and the Union Government undertakes to allow the mines to employ a minimum of 65,000 The numbers may be altered whenever in Mozambique there is not sufficient Native labour available for its own requirements, or whenever Native labour exceeds such requirements, and secondly, whenever in the Union the Government may have to provide against unemployment amongst Union Natives In addition, the Government of Mozambique reserves its general right to limit or stop recruiting in areas where there are pressing local demands for Native labour

The Convention provides for the recruiting and repatriation of Mozambique Natives The Government of Mozambique reserves the right to prohibit the allotment of Portuguese Natives to any mine if, upon a joint investigation by representatives of the two Governments, the management of the mine or its responsible staff are found to have failed to comply in some substantial respect or persistently after warning with the obligations imposed by the Convention

As regards contracts, the Convention provides that their duration shall not extend for a longer period than twelve months (313 shifts) but that the Natives may be re-engaged or extend their contracts for a further period or periods up to an additional six months (156 shifts) After the first nine months (234 shifts) and during any period or periods of re-engagement, deferred pay representing as nearly as practicable one-half of the rate of pay is to be retained from the earnings of Portuguese Natives and paid them on their return to Mozambique

No Portuguese Native previously employed on the mines may again be engaged for mining employment unless he can produce evidence to show that he has been at least six consecutive months in Mozambique since his last employment On the termination of their services Portuguese Natives are regarded as prohibited immigrants and therefore subject to compulsory repatriation

In accordance with the Convention a Portuguese official is appointed to undertake at Johannesburg the duties of Curator for all Portuguese Natives resident in the Union His duties include the collection of fees payable in respect of Portuguese Natives, the issue and renewal of passports, the organisation of a deposit and transfer agency for moneys belonging to Natives and generally the supervision of the welfare of Portuguese Natives

In other parts of Southern Africa, notably in the *Mandated Territory of South West Africa* under the administration of the Union of South Africa and in the territories of *Basutoland*, *Bechuanaland* and *Swaziland* under British administration, the influence of the South African laws is dominant The South West African Masters and Servants Proclamation of 1920 is largely based on the Cape law, and a Proclamation of 1917, making provision for the control and treatment of Natives employed on mines and other large works, owes much to the Union Act of 1911 In Basutoland and Bechuanaland the Cape law applies and in Swaziland the similar Transvaal law Modifications in the legislation in these territories have been inspired by the Union 1911 Act Mention should also be made of the Bechuanaland Native Labourers (Protection) Proclamation 1936, which appears to be the first attempt in British territories to regulate separately the employment of Natives by Natives The effect of the Proclamation is to exclude such labour relationships from contract labour legislation, employment being terminable by one month's notice on either side and the Masters and Servants laws not being applicable

Although numbers are less than in the Union, the self-governing Colony of *Southern Rhodesia* is another important territory of contract employment At the time of the 1936 Census there were 254,297 Natives in employment The legislation again closely follows South African precedents In practice there is a growing tendency for the labourers to be engaged on a monthly basis, but the monthly labourers remain still subject to the relevant provisions of the laws concerning masters and servants and employment in mines and works, notably the penal sanctions

Less than 42 5 per cent of the Natives in employment in 1936 were of Southern Rhodesian origin Of the others Nyasaland supplied 28 per cent of the Native labour supply, Northern Rhodesia 18 5 per cent and Portuguese territory 10 per cent

In the case of Portuguese labour the Southern Rhodesian Government has signed an Agreement with the Government of Mozambique, the present renewal of which came into effect on 1 February 1934 The Agreement permits the recruiting within the district of Tete of Portuguese Native workers for employment in Southern Rhodesia on condition that the number of such labourers in Southern Rhodesia at any time as the result of such recruiting shall not exceed a monthly average of 15,000 The Government of Mozambique reserves the right to prohibit recruiting by any person on behalf of, or the distribution of labour to any employer in Southern Rhodesia who, upon a joint investigation, is found to have failed in some substantial respect, or repeatedly after warning, to comply with any obligation imposed by the Agreement or with any regulation in force in the district of Tete

As regards conditions of employment, the Agreement provides that any person recruiting labour is required to make arrangements for the payment of one-half of the wages of the Portuguese labourers upon their return to the district in which they were engaged, less advances, passport fees and costs of repatriation

As in the case of the Convention with the Union of South Africa, the Portuguese Government, under the Southern Rhodesia Agreement, maintains a Curator in Southern Rhodesia for the collection of fees, the issue of passports, the organisation of a deposit and transfer agency and the general welfare of Portuguese Native labourers

A second Agreement concerning Native labour in Southern Rhodesia is the Agreement on Migrant and Native Labour reached on 21 August 1936 with the Governments of Northern Rhodesia and Nyasaland Like the Agreement between Southern Rhodesia

and Mozambique this text concerns the supply of Native labour and does not directly provide for the contracting of the Native labourers Certain provisions, however, have a bearing on conditions of contract employment in Southern Rhodesia

The Governments agree that it is desirable that emigrant Natives in general should return to their homes after working for an economic period which should not exceed two years and might well be less, and that after two years they should be repatriated subject to exceptions allowed on reference to the Labour Commissioner of the labourers' country of origin To assist in the organisation of a remittance system and for the general purpose of assisting and safeguarding Northern Natives, the Government of Southern Rhodesia has undertaken to appoint seven itinerant officials In addition, the Governments agree to set up a standing committee composed of representatives of the three Governments to secure co-ordination in labour policy and to report upon problems affecting labour as they arise It is further agreed that the Governments of Northern Rhodesia and Nyasaland shall each appoint an official to be permanently resident in Southern Rhodesia as a Labour Commissioner

Northern Rhodesia, a Protectorate administered by Great Britain, is a territory both of labour emigration and of Native employment In 1936, 49,030 Natives were estimated to be employed outside the territory, and 66,702 (excluding tax-labour) to be employed within the territory, of whom a monthly average of 18,464 were employed in the mines Labour legislation was consolidated and extended by the Employment of Natives Ordinance 1929 and Regulations of 1931 The resulting legal measures of protection, at least as regards mining employment, are perhaps the most far-reaching in British African Dependencies In many respects they appear to be based on Southern Rhodesian law and thus to originate in South Africa On the other hand, the influence of the Native policy of Tanganyika may also be traced Although the labour laws provide for long-term contracts, in practice it appears that Native labour is now mostly engaged under agreements for 30 working days

In *Nyasaland* the chief labour problem is that of the emigrant labourer, 120,000 of the adult males being estimated to be abroad Legislation is considerably less detailed than in other Central and East African dependencies and chiefly dates from 1909 Once again practice has outstripped legislation and most contracts

appear to be for a working month Account will be taken later in connection with Kenya of a special Ordinance in Nyasaland regulating the conditions of Natives on European farms

In the *Mandated Territory of Tanganyika* and in *Kenya* there is considerable Native employment under contract on European estates, and recently there has been an expansion in mining employment, in *Uganda* Native economic production is on a large scale In Tanganyika some 250,000 and in Kenya about 150,000 Natives are in employment, in Uganda the average monthly total for 1935 is given as 45,756, but it is not clear to what extent, if any, account is taken of the employment of Natives by Natives In these East African dependencies the laws bear a close family resemblance and in the smaller dependencies of *Zanzibar* and *British Somaliland* the differences appear largely to result from the greater simplicity of the labour problems in these two territories Provision is made for written contracts in certain cases and for the administrative control of such contracts, while penal sanctions are applicable to all workers under contract In practice short labour agreements, such as for 30 working days, have been greatly extended and have become the normal method of employment of wage earners

It appears necessary, in view of the nature of the Conference's task, to examine at somewhat greater length the position of certain Natives residing on European farms in the Union of South Africa, Nyasaland and Kenya

The laws in question are the Union of South Africa Native Service Contract Act 1932, the Nyasaland Natives on Private Estates Ordinance (Nos 15 and 16 of 1928 and No 11 of 1930), and the Kenya Resident Native Labourers Ordinance 1925 In Kenya the Government, in April 1937, introduced a Bill designed to replace the 1925 Ordinance [1]

Under the South African Act a labour tenant contract is defined as a contract whereby a Native binds himself or his ward to render services as a consideration for permission to occupy or use land The Act does not define the privileges to be granted to the labour tenant, nor the services to be paid by him In practice these vary greatly The labour tenant may be required with his family to serve the employer-landlord for two days a week, for 90 days in the year, for 180 days in the year, for nine months, or whenever

[1] This Bill was passed by the Legislative Council while the Report was in the press

called upon There appears to be a tendency to require six months' labour as the minimum period of services, the Act making it possible to impose by proclamation, in any given district, a tax of £5 on landowners in respect of any able-bodied adult male Native who has worked for less than six months in the year For the labour in some cases neither cash wages nor rations are granted, in others rations may be granted without cash wages, and in others again both rations and wages Many examples of the resulting position of the Native labour tenant in regard to remuneration are given in the report of the Native Economic Commission One example here will suffice On farms in districts of the Western Transvaal the average size of the working family was 2 46 A total of 21 06 man months were worked in the year by the family In return the family received £7 49 in cash, £16 67 in food, £12 87 in land privileges, £5 44 in grazing privileges, £0 98 in stock or produce and £1 21 in other privileges

In Nyasaland natives on private estates (other than those who have obtained exemption) are required to pay rents District rent boards fix the maximum rent to be paid by such Natives This rent may be paid in cash, in crops or in labour for three working months in the year, but if the owner fails to offer resident Natives work for wages (at the prevailing market rate) on the estate, or reasonable facilities to grow such crops as may reasonably be expected to produce by their sale a sum sufficient to pay the rent, the owner is deemed to have received the rent due from them

In Kenya under the present Ordinance the resident Native labourer and the adult male members of his family are required to furnish a minimum of 180 days' service in the year In return the farm occupier is required to provide building material for the Natives' huts, sufficient and suitable land for the cultivation of food crops, grazing for a number of stock to be specified in each contract and wages for the days of service at a rate to be specified in each contract The amending Bill proposes no change in these general conditions except that a maximum period of service is fixed at 270 days in the year

This summary of the legal basis of the Native tenant system illustrates a special problem, to which further reference will be made in the third section of this chapter, namely, whether such labour tenant contracts can properly be regarded as contracts of employment In Kenya there appears little doubt that the labour tenants would be regarded as contract labourers The terms of the law, still more of the new Bill, suggest this More-

over, in the House of Commons on 13 April 1937, the Secretary of State for the Colonies said that the Natives concerned were not tenants in the ordinary sense, but persons who had been permitted as part of the conditions of their employment to reside and to keep a certain number of cattle and other animals on their employers' farms It seems that the opposite is the position in Nyasaland Primarily the Natives concerned are tenants who may, however, furnish labour in lieu of rent In the Union of South Africa the general character of the law and the variations in the contracts actually in force make the situation difficult to appreciate On the one hand the definition of the labour tenant contract would appear to exclude such contracts from contracts for the hire of services in return for wages On the other hand there is a tendency in South Africa to insist increasingly on the labour character of the relations between the parties to the labour tenant contract, and it is even advocated that the labour tenant's total remuneration should be calculated in terms of cash

To complete this survey of the British African Dependencies the *Gambia*, *Gold Coast*, *Nigeria* and *Sierra Leone* may be taken together In these territories the problems of contract labour as treated in this Report have almost ceased to exist In the Gambia, except for foreign employment, there are no longer any legal provisions regulating labour contracts as considered here In the other West African dependencies penal sanctions have been abolished, with one very minor exception, and, although the laws still provide for the administrative control of the limitation of long-term contracts, in practice engagements with European employers are almost invariably for short periods It may be noted that in parts of West Africa contracts between Native employers and workers may be excluded from the contract legislation In the Gold Coast the definition of the contract of service excludes oral contracts made between Natives according to Native custom In Nigeria the Labour Ordinance does not apply to contracts of service entered into in accordance with Native law and custom if all the parties are Natives of Nigeria, except where the employer is working under a contract with the Government or any non-Native foreigner It is not clear how the line of distinction is drawn, where, as in the Gold Coast cocoa areas, Native economic development has largely modified the character of the employment of Natives by Natives

Before turning to the Pacific area, which after Africa is of chief

importance in the consideration of the contract labour system in the territories administered by Great Britain and the Dominions, it is necessary to outline the position in certain Asiatic dependencies and certain islands of the Indian Ocean

The dependencies of Ceylon and Malaya employ labour on a large scale The contract labour system, however, as treated in this Report, is no longer in operation

In *Ceylon* labour is drawn from the local Sinhalese population, and also in large numbers from India The vast majority of the Indian immigrants are engaged in plantation work The others find employment chiefly in certain Government departments, with municipalities and local boards, and with the various engineering firms, mills, etc , in Colombo At the end of 1935, when the total estimated population of Ceylon was 5,617,000, about 775,000 Indians were living in the island Of these, 674,024, i e 214,225 men, 204,739 women and 255,060 children, were resident on the estates

Over the migration of Indians to Ceylon control is exercised by the Indian authorities under the Indian Emigration Act, 1922 This Act defines emigration as departure by sea out of British India of " any person who departs under an agreement to work for hire in any country beyond the limits of India " and of " any person who is assisted to depart otherwise than by a relative if he departs for the purpose or with the intention of working for hire or engaging in agriculture in any country beyond the limits of India" In practice Indians travelling to Ceylon for employment outside the estates fall outside the scope of this Act, as they usually pay their own passages and are not engaged prior to emigration On the other hand agricultural labourers employed on estates, whether recruited or spontaneously joining the emigration camps maintained by the Ceylon planting community in Southern India, are always provided with assisted passages, and accordingly come under the Indian Emigration Act and enjoy the special protection of the Government of India

The basic law concerning contracts of employment of non-European workers in Ceylon is Ordinance No 11 of 1865, amended in 1889, which applies to both Sinhalese and Indian labour It provides, *inter alia*, that contracts for periods longer than one month shall be in writing, and that their maximum duration shall be three years, or five years for workers employed by Government departments Oral contracts are deemed to be for the period of

one month They may be renewed from month to month and are presumed to be renewed unless one month's previous notice is given Oral contracts for the hire of journeymen artificers, where no agreement to the contrary has been made, are deemed to be only for the day

It is not known whether long-term contracts have ever been used to an appreciable extent for workers employed elsewhere than on estates Indian plantation labour, however, is stated never to have been indentured In 1917, an official commission reported that it had not come across a single contract for a period exceeding one month, except in Government departments, where 250 bricklayers and carpenters were employed at high wages on a three years' contract Previous to the Indian Emigration Act monthly oral agreements were in general use, and under the Act the Government of India stipulated that labourers emigrating to Ceylon for unskilled work should neither before nor after leaving India enter into contracts for longer than one month, and that the Government of the Island should within six months enact the necessary provisions to this effect

In compliance with this requirement the Government of Ceylon enacted Ordinance No 1 of 1923, limiting contracts with Indian immigrant labourers to a maximum period of one month In the term " Indian immigrant labourers " are included all Indian immigrants entering Ceylon under agreements to perform unskilled work for hire, and all Indian immigrants assisted to Ceylon otherwise than by a relative for the purpose or with the intention of performing unskilled work As in fact all Indian estate labourers are brought to Ceylon at the expense of the Indian Immigration Fund, they fall within the terms of the 1923 Ordinance and may not be engaged for periods exceeding one month, despite the Ordinances of 1865 and 1889

The present situation is thus as follows The Ordinances of 1865 and 1889 still contain provisions relating to contracts for periods in excess of one month, but in virtue of the 1923 Ordinance and the system of assisted immigration, Indian estate labourers may be engaged on monthly agreements only For Indians employed outside the estates, as well as for local Sinhalese labour, agreements of one month or less have been for many years the general practice For these reasons it is not intended in this Report to discuss the law and practice regarding contracts of service in Ceylon in greater detail As regards penal sanctions, up to 1921 penalties were provided

under the 1865 Ordinance In 1921 the provisions were repealed, except those providing penalties for employers of Indian estate labour (under the 1889 Ordinance)

In *Malaya* the labour demand is chiefly met by immigrants from India and China At the end of 1935, on estates, mines, factories and other places where 10 or more labourers are employed and in Government departments, the numbers employed were Indians, 231,475, Chinese, 127,869, Javanese, 13,789, Malays and others, 30,281 The regulation of the relations between employers and workers as provided in the labour laws now in force in the Straits Settlements, the Federated Malay States and the Unfederated Malay States is the outcome of a long evolution

Labour emigration from India to Malaya dates almost from the beginning of the last century, and, so long as the Straits Settlements formed part of the Government of Bengal, remained uncontrolled After the separation of the Colony from India in 1867 the Government of India introduced various measures concerning recruiting and engagement Employment was usually contract employment under penal sanctions, and laws enacted in India and in the Straits Settlements provided for the passing of contracts in the presence of a competent officer either before departure from India or on arrival In 1897, however, the Government of India, considering that it was in the interests of the Straits Settlements adequately to protect Indian immigrants, decided to leave the whole matter in the hands of the Straits Government and removed all restrictions, with the result that for a quarter of a century no supervision was exercised on the Indian side In this period employers also imported " free " coolies on oral monthly agreements

In the early years of the present century a new situation arose as a result of the advent of rubber An acute demand for labour sprang up and crimping became common The contract system no longer provided either adequate security or adequate numbers, and the system of " free " recruiting provided little or no security Dissatisfaction with the labour situation was general and when a proposal was made in 1906 that all employers of Indian labour should be taxed and the proceeds pooled in a fund to be expended solely on importing Indian labour the feeling in its favour was so unanimous that the Indian Immigration Fund was constituted in 1907

This solved the problem of supply and security and made it possible in 1910 to abolish the contract system for Indians, the Indian labour force already consisting for the greater part of

" free " coolies After the abolition of contracts, unskilled Indian labourers worked on oral monthly agreements They continued, however, to be liable to penal sanctions for labour offences In 1921, however, the Government of India introduced new emigration laws to bring emigration to Malaya again under Indian control In consequence the Governments of the Straits Settlements and the Federated Malay States abolished imprisonment as a penalty for labour offences, and entered into negotiations with the Government of India on the conditions on which emigration to Malaya would henceforth be allowed Some of these conditions were laid down in a notification issued by the Government of India under the Indian Emigration Act 1922, others involved amendments of the Malayan labour laws Among the former was the requirement that unskilled labourers should not be engaged for a period exceeding one month, which confirmed existing practice, and among the latter was the abolition of fines for labour offences, the contract thus becoming purely civil

In the meantime the employment of Chinese labour underwent a similar evolution Labourers were provided with passage money and advances by recruiters on condition that on arrival they accepted contracts with employers willing to reimburse the recruiters As early as 1823 an Ordinance was issued limiting the amount due for passage money and advances to $20 and the period of service to be worked by an adult in compensation thereof to two years, and providing that every engagement should be entered into with the free consent of the parties in the presence of a magistrate and duly registered This Ordinance apparently fell into disuse and for many years the immigration of Chinese coolies was attended by the worst abuses Definite improvement was achieved in 1877 by the establishment of a Chinese Protectorate in the Straits Settlements and by an 1880 Ordinance providing for the government control of Chinese immigrants and contracts of employment It was only, however, in 1914, four years after it had ceased to apply to Indian immigrant labour, that the contract system was abolished for Chinese coolies, who are now engaged on monthly agreements only, except on mines where employment on a profit-sharing basis may involve longer terms of service In addition, assisted immigration has ceased and all labourers crossing from China to Malaya are reported to come spontaneously and unassisted

As regards penal sanctions, while the contract system prevailed Chinese were liable to penalties for desertion and other labour offences After the abolition of contracts penal sanctions con-

tinued for some years to apply to " free " coolies, but were abolished in 1921 and 1923 as for Indian labourers

It was not until 1908 and 1909 that, after protracted negotiations with the Netherlands Indian Government, special laws were enacted in Malaya for the protection of Netherlands Indian labour The labourers were recruited in Java under permits issued by the Netherlands Indian Government, and, before leaving, signed in the presence of an official a contract for a period not exceeding 900 working days, subject to penal sanctions In a country where all other labour was free their position came to be regarded as an anachronism and in 1931 negotiations were opened with the Netherlands Indian Government with a view to bringing them under the ordinary labour law As a result the special laws have been repealed and Javanese, like other Asiatics, are now employed on oral monthly agreements of a purely civil character

There is one category of workers to whom penal sanctions continued to apply after their abolition for other workers, namely, domestic servants At present the relevant provisions are, however, regarded as out of date They no longer figure in the latest codes in Brunei, Trengganu and Kelantan, in 1935 they were repealed in the Straits Settlements, and it is to be expected that the Federated Malay States and Johore, Kedah and Perlis will soon follow suit

Apart from a few exceptions, mostly of minor importance, the laws relating to contracts of employment actually in force in the various territories of British Malaya are identical in purport and in most sections even identical in wording They are based on the principle of " free " labour, i e labourers may not be compelled to work in payment of debts, are at liberty to leave their employment on giving due notice and are not subject to penal sanctions Labour agreements are normally oral, and may not be entered into for a period exceeding one month or for more than 30 days' work On expiration without notice oral agreements are deemed to be continued on the same terms The length of notice is equal to the period of the agreement, subject to a maximum of one month or, in the case of domestic servants, 14 days Either party may terminate the agreement without notice upon payment of a sum equal to the wages which would have accrued to the labourer during the term of such notice

To the above provisions two exceptions exist

The first concerns Indians emigrating to Malaya for the purpose of skilled work The Malayan labour codes contain a provision

to the effect that a written contract entered into by a skilled Indian worker before departure from India is valid, provided that the permission to emigrate granted under the Indian Emigration Act 1922 and the contract are produced to the Controller of Labour within one month of arrival It does not appear, however, that skilled Indian workers in practice immigrate under contract

On the other hand, the second exception, labourers employed on mines, is of considerable practical importance Chinese labourers may be employed on piece work or as tribute labourers The latter work without any fixed remuneration but with a right to retain the value of all minerals won, subject to the payment of a fixed percentage Under the codes any person employing labourers on a mine either on piece work or as tribute labourers may announce the conditions of engagement by affixing a notice to that effect in the Chinese language In the absence of any special agreement to the contrary, the terms of the notice are deemed to be binding as a contract as between the employer and such labourers as may enter employment whilst the notice continues to be affixed The notice may not contain illegal or immoral conditions and all the terms and conditions stipulated therein are subject to the approval of the Controller of Labour No labourer taking service under such notice may be compelled to continue working under its conditions for a longer period than six or, in the case of tribute labourers, 12 months, notwithstanding any debt that he may owe to any person The labourer's liability for the fulfilment of his obligations is a purely civil one

In spite of the question of employment on mines, it appears from the above summary of conditions in British Malaya that the system of employment is no longer comparable with the systems under consideration Apart therefore from the above somewhat detailed summary, legislation and practice in British Malaya will not be examined in this Report

North Borneo has followed the example of Malaya In 1932, the Abolition of Indentured Labour Ordinance prohibited, from January 1933, contracts for more than one month This important change was confirmed in 1935 by the deletion from the Labour Ordinance, 1929, of all provisions relating to written contracts, a measure which also involved the abolition of all penal sanctions provided for by the Ordinance for desertion and other labour offences A new labour Ordinance, which was drafted a few years

ago, is still under consideration [1] The present situation, so far as contracts of employment are concerned, is that every contract is terminable on one month's notice

In *Sarawak*, Order No L -3 (Labour Protection) 1935 abolished all long-term contract labour, till then permitted in respect of Netherlands-Indian immigrants, and limited labour agrements to one month Penal sanctions, to which Netherlands-Indian workers were still liable for desertion or other labour offences, were also abolished

In *Hong Kong*, where the majority of the urban labouring classes are engaged in commerce, shipping, public works, etc , the law regulating contracts of service is the Employers and Servants Ordinance, 1902 Like many of the corresponding laws in other British dependencies, the Ordinance provides that contracts for periods longer than one month must be drawn up in writing in the presence of a competent officer The maximum duration of contracts is five years if they are made outside the Colony and three years if made within the Colony Since the abolition of penal sanctions for labour offences in 1932, the relations between employer and worker are governed by the ordinary law of contract only

Hong Kong is an important port of Chinese emigration The Asiatic Emigration Ordinance, 1915, provides that emigrant ships may only carry free emigrants, i e emigrants who are not under any contract of service whatever

In *Mauritius* the labour employed on estates is almost exclusively Indian in origin and derived from importations of contract labour which continued until 1910 During 1935 an average of 11,368 Indians, resident on estates, were employed by the month under oral contracts of service Others, housed on the estates or living in the adjoining villages, were engaged by the day or by the job

Contracts of service are subject to the civil law in force in the Colony, unless they are provided for in the Labour Ordinance, in which case the latter prevails The civil law regarding contracts is contained in the French Civil Code The principal Labour Ordinance enacted in the Colony is the Ordinance of 1922, which has been amended on several occasions, in particular with regard to the maximum duration of contracts In its original form it permitted the engagement of labourers for five years, but in the

[1] A new Ordinance was passed and brought into force in November 1936, but the International Labour Office had not received the text at the time this Report was in the press

very year of its enactment the maximum term of service was reduced to one month, except for labourers introduced from elsewhere than British India who remained free to accept a five years' contract In 1933 the legal maximum was again fixed at five years for all servants coming within the scope of the Ordinance, while, finally, in 1934, it was reduced to one year This maximum applies to oral as well as written contracts As has already been stated, Indians working on sugar plantations are engaged by the job, by the day, or by the month under oral agreement The Office is not aware whether in practice other labourers are employed under contracts for more than one month

The *Seychelles* formed a dependency of Mauritius until 1897 Employment on the estates of the principal islands is chiefly under oral monthly agreement The labour problem is more difficult on the outlying islands These islands are uninhabited except for the labourers who are engaged from the principal islands under special contracts, which in practice appear to be written contracts for six months' employment subject to penal sanctions

Before reaching the typical Pacific areas of Native employment, mention must be made of the position in *Fiji* where both Indian and Fijian labourers are employed Fijians, when entering upon wage-earning employment, mostly engage as agricultural labourers under contract for periods not exceeding a year, there is also some casual employment in the ports, and recently a number have been attracted to the gold mines Of the Indians, who were originally introduced under contract, only a small minority is entirely dependent for its livelihood on cash wages

The basic law relating to contracts of employment, the Masters and Servants Ordinance, 1890, applies to all contracts entered into by Indians and Fijians, except when the latter are employed in husbandry or as plantation labourers, in which case contracts are governed by the Fijian Labour Ordinance, 1895 Both Ordinances provide for written contracts in certain circumstances and penal sanctions Contracts for Indians, however, were abolished as from 1 January 1920

As already stated, as regards Great Britain and the Dominions, the problems of the labour contract treated in this Report are of chief importance outside Africa in certain territories of the Pacific Employment is not on a large scale In the *Mandated Territory*

of New Guinea, on 30 June 1936, 36,927 Natives were employed under contract, chiefly on plantations and mines Natives are also employed under contract in *Papua* In the *Mandated Territory of Nauru*, in 1935, 1,081 Chinese were employed on the phosphate mines In the *British Solomon Islands*, on 31 December 1935, 2,043 Natives were in employment, usually on plantations In the *Gilbert and Ellice Islands* there is some employment of Chinese and Natives under contract on the phosphate deposits of Ocean Island and on estates In the *New Hebrides*, Natives are employed by British employers, to whom a separate labour regulation applies It is not, however, the numbers in employment which makes the labour question of social importance in these territories, but the geographical and demographical problems of administration The dangers of depopulation, the primitive character of many of the workers and the remoteness of many of the undertakings have made necessary considerable minuteness in detailing the obligations of the parties to the labour contract and also have been dominating factors in maintaining long-term engagements under penal sanctions as the normal practice of employment As a result, in the dependencies of Australia and Great Britain, the whole gamut of the contract labour system is to be found both in law and in practice

In the Mandated Territory of New Guinea and in Papua, both under Australian administration, measures will be mentioned in this Report designed to encourage the engagement of certain classes of Natives without contracts of service, although to them too some portions of the contract labour system still apply Mention should also be made of the *Mandated Territory of Western Samoa* under the administration of New Zealand, where there exists a system of contract employment for immigrant workers in which many of the features of a repressive character are lacking Even so the Administration has undertaken to repatriate the few hundred Chinese workers now employed under the system At present both the labourer and the employer are deemed to have entered into a binding agreement with the Government of Samoa in terms of a specified contract of employment Under this agreement a labourer is offered three years, continuous employment The employment, however, need not be with the same employer, as the labourer is entitled to terminate his service with any employer by giving seven days' notice

It is more typical, however, of conditions in the Pacific that not only do most labour laws enter into great detail on the subjects

treated in African contract labour legislation, but in addition certain precautions are taken which are wholly absent in the laws of the British Dependencies in Africa Of these the most important is the subordination in certain cases of the right to employ labour under contract to the approval of the Government authorities In the Gilbert and Ellice Islands, for example, if any person desires to engage the services of labourers for a period exceeding one month, he is required to obtain a permit This permit may be refused or granted only after the employer has provided security for the payment of wages and the repatriation of the labourers It may be cancelled for any reasonable cause In the Mandated Territory of New Guinea, before any contract is sanctioned the employer, unless specially exempted, is required to lodge a guarantee for the execution of the contract Furthermore, if at any time it appears to the central authority desirable in the interests of Natives that any person should be prohibited from employing or having charge of Natives, an Order may be issued to this effect

The other chief features of the laws are the close administrative control of recruiting and engagement, the limitation of the classes of workers who may be contracted, the limitation of the maximum term of the contracts, often with provisions for compulsory repatriation, and a detailed series of penal sanctions

The last territories administered by Great Britain which require mention are the West Indian and American dependencies The bulk of the labour is mainly of African origin In *British Guiana*, *Jamaica* and *Trinidad* there is also an important East Indian element resulting from contract immigration which has now ceased There is also a small aboriginal population in British Guiana for whom labour protection is necessary As a general rule, though to varying degrees, the workers are chiefly occupied in peasant production Their earnings, however, are eked out by casual employment on estates, and in some cases they are mainly dependent on estate employment Industrial production (mines and petroleum) is confined to British Guiana and Trinidad, except for the industries directly connected with agriculture

As regards legislation, in some cases contract labour laws of considerable detail still remain on the Statute Books in the form of Masters and Servants laws and of laws governing the immigration of indentured Indian labourers In practice the effect of these laws is small The West Indian labourer never took kindly to contract labour which had too close a resemblance to the hated institution of slavery, while Indian immigration has ceased The protective

features of contract labour legislation, however, still apply in the engagement of workers for employment abroad Moreover, penal sanctions are still occasionally used in some of the territories

Largely for this last reason mention will be made in the course of this Report of some of the legal provisions and conditions in respect of contract labour in these dependencies The information, however, will be of a very summary character, as on the whole the contract labour problems are no longer relevant to present conditions

SPAIN

The only Spanish possessions with which this Report is concerned are those of the Gulf of Guinea, where the most important centre of employment is the island of Fernando Po, the legislation in force in Spain itself applies in the North African cities under Spanish sovereignty (Melilla, Ceuta, Alhucimas, Peñon de Velez and Chafarinas), and was being gradually extended to the Spanish zone of Morocco

In 1934 and 1935, new Native labour legislation was promulgated in the territories of the Gulf of Guinea to replace in part the existing legislation based on the Regulations of 6 August 1906, which, however, remain in force except in so far as their provisions are superseded by the new laws The first of the new measures was the Decree of 27 September 1934 [1] regulating the recruiting and engagement under contract of indigenous workers This Decree was supplemented in various respects, mainly in regard to conditions of employment, by the Decree of 12 February 1935 [2] This legislation was intended to be of a provisional nature, and to apply until new regulations relating to Native labour employed in the colony were promulgated

A feature of the Decree of 27 September 1934 was the provision that, after 1 January 1935, no worker might be engaged under a labour contract except through one of the employment exchanges set up at the offices of the Curator In accordance with the 1906 Regulations, the contract must be concluded in the presence of the Curator or his representative, it is in writing, and a copy, in the form of a work-book, is delivered to the worker.

---

[1] *Boletin Oficial de los Territorios Españoles del Golfo de Guinea*, 1 October 1934

[2] *Boletin Oficial de los Territorios Españoles del Golfo de Guinea*, 15 February 1935

The length of the period of service to be stipulated in the contract is fixed by the Regulations of 1906 (section 27) at one year at least, and the contract may be renewed at will by the parties for an equal, shorter or longer period However, in a communication from the Spanish Government to the Secretary-General of the League of Nations, dated 3 November 1936, it was stated that "provision is made for labour contracts lasting one year, which may be extended, with the consent of the Native, for not more than another year [1]"

The 1906 Regulations made very limited provision for penal sanctions against the workers For minor offences the *Curaduria* is empowered to inflict equitable punishment, in case of desertion, the worker is to be returned, if apprehended by the *Curaduria*, to the employer and may be sentenced to imprisonment for a period not exceeding ten days

FRANCE

For the purposes of an analysis of contract labour legislation, the French possessions may be divided into two classes

(1) North Africa (Tunisia, Algeria, Morocco) and the "old colonies", Reunion, Martinique, Guadeloupe and French Guiana,

(2) the other African territories (French Equatorial Africa, French West Africa, the Cameroons and Togoland under French Mandate, Madagascar, French Somaliland) the Asiatic territories (French India, Indo-China), and the Pacific territories (New Caledonia, French Settlements in the Pacific)

In the first group of territories, the settlement of Europeans has led to the development of social legislation very similar to that of the home country In these territories agreements between employers and workers are generally verbal and the labour employed is usually local Books I and II of the French Labour Code have been extended to Martinique, Guadeloupe and Reunion by Decrees issued between 1912 and 1917, French legislation on trade unions has also been made applicable to these colonies

In the second group of colonies, the evolution of contract labour legislation has gradually replaced the former system of "regulated immigration" by that of the contract conferring rights and duties on both parties Under the "regulated immigration" system Native labour was subject to a special regime which resembled,

---

[1] *Report of the Advisory Committee of Experts on Slavery*, Fourth Session 5-10 April 1937, p 51 (C 188 1937 VI)

by the combination of a long period of service and penal sanctions, a substitute form of slavery The contract system gives guarantees both to the employer and the Native worker, since the employer must undertake to respect the vital interests, moral as well as material, of the workers

This modern form of contract has not, however, been regulated generally for all French possessions [1], each of the French overseas territories has its own special labour legislation The Ministry for the Colonies has indeed taken preliminary steps in recent years to supplement and unify the provisions for the regulation of the contract in the overseas' possessions An enquiry into labour conditions in these territories was ordered by a Ministerial Circular of 17 November 1926, and, on the basis of the results of this enquiry, the Ministry prepared a draft Decree containing 36 clauses and treating of all the various aspects of Native labour, and in particular of the regulation of contracts This draft was circulated to the Governors of the various colonies, but gave rise to objections based more especially on the climatic, agricultural and industrial differences between the several territories, and on the differences between the social evolution of their inhabitants Labour conditions in the French colonies are therefore still regulated by local legislation

In almost all the colonies, the laws regulating the labour contract have been amended since the war—especially between 1922 and 1927—with the object of providing closer protection of the workers, in accordance, more particularly, with the following principles In every colony the employment of " free " labour in conformity with local usage is still permitted, but when the period of service is to exceed a given length the administration intervenes as a supervising authority, or sometimes even as a party to the contract, for the purpose of guaranteeing the freedom of contract, imposing on the parties reciprocal obligations, and laying down certain minimum conditions of life and labour for the workers As a counterpart in favour of the employers, the contract gives a certain stability to the labour force by providing exceptional legal remedies in case of breach of contract on the part of the workers, in all the colonies there exist penal sanctions, either of an indirect kind as in the African colonies or in a definitely characterised form as in the Asiatic and Pacific territories The length of the contract is limited

[1] With the exception of two Ministerial Circulars of 22 July and 4 October 1924 relating to the measures to be taken for the protection of the health of indigenous workers employed by public or private undertakings, or destined to be employed abroad

to two years in Africa, and to from three to five years in Asia and the Pacific

The present tendency of French colonial labour legislation is, however, towards the substitution of the existing contract legislation by a system which is really the French law relating to the hiring of services modified only to the extent necessary to adapt it to local conditions This evolution has been considerably accelerated by the Popular Front Government and at present the labour contract legislation in French colonial possessions is undergoing far-reaching reform The general tenor of this reform is to introduce in all the colonies the application of those provisions of Book I of the French Labour and Social Welfare Code which deal with labour agreements Under the French Code, the hiring of services is a matter of common law the agreement may be made either in writing or verbally, it is not registered, its duration is not fixed limitatively, and it may be terminated at any time by either party on the giving of due notice, if the period of notice is not respected, an action for damages may be brought by the aggrieved party before a common law jurisdiction

It is a system of this kind which was introduced in Indo-China by a Decree of 30 December 1936 This Decree promulgates a complete Native labour code, it regulates apprenticeship, introduces collective agreements, suppresses fines, provides for the fixing of minimum wage rates, protects women and children, limits hours of work, makes provision for paid holidays, etc

It will be observed that this system, in suppressing the model contract, the principal clauses of which were prescribed by law, suppresses at the same time the protection provided by the contract for the Native worker in his relations with the European employer The development at present taking place would replace this protection by the methods of protecting the interests of the European worker, i e the collective agreement between organisations of employers and of workers, trade unions, statutory minimum wage fixing, and the solution of labour disputes by conciliation and arbitration Various measures tending in these directions have also been adopted in colonies other than Indo-China

In French West Africa a Decree of 11 March 1937 permits the formation of trade unions of Natives who can speak, read and write French, special provision is made in a Decree of 20 March 1937 for the defence of the interests of Natives who do not fulfil the above-mentioned condition Two other Decrees of 20 March 1937 provide for collective agreements and for conciliation and

arbitration in cases of labour disputes A Decree of 3 April 1937 provides for the fixing of minimum wage rates for Native workers by the administration

In Madagascar a Decree of 19 March 1937 authorises Native workers to belong to trade unions, on condition that they have the same elementary knowledge of the French language required in French West Africa

In the French Settlements in India a Decree of 6 April 1937 provides for collective agreements, trade unions, and conciliation and arbitration Similar measures are being prepared in other colonies, including French Equatorial Africa

This development of labour legislation in the French colonies raises a number of important problems and, in particular, the following to what extent the new system of regulating the hiring of services, closely modelled on the law of the home country, will replace the system of the labour contract, the length of which is fixed and the breach of which gives rise to the application of penal sanctions As regards Indo-China, the Decree of 30 December 1936, mentioned above, expressly declares that " contract labour " remains subject to the special regulations already in force (Order of 25 October 1927 as subsequently amended) It would seem probable that in the other colonies the two systems will also continue to exist side by side, and that the Native worker will be free to serve under whichever system he prefers It is not, however, clear whether the old form of contract will continue to be compulsory for agreements for a period exceeding a given period (usually three months), this point will probably be elucidated by the regulations for the application of the new legislation which must be issued by the local authorities However this may be, it is of interest to note that the use of the old type of contract is becoming less frequent in the French possessions

As regards the definition of the labour contract in French colonial legislation, the remarks made above in connection with Belgian legislation are generally valid The contract is either not specifically defined or is defined only for the purpose of determining the persons who may be parties to a contract covered by the legislation

Thus the Madagascar legislation defines " labour contracts " as contracts " concluded between employers, of the one part, and, of the other part, Native wage earners employed by an agricultural, commercial or industrial undertaking " [1]

[1] Decree of 22 September 1925, section 20

A similar definition is given in the French Somaliland legislation [1]

The French West Africa legislation [2] contains a fuller definition; " labour contracts " are contracts " concluded between employers, of the one part, and Native workers, of the other part, for specified work in a commercial, industrial or agricultural undertaking, and involving for the person or company directing the undertaking registration on the patent roll or the possession of a regular title to carry on the undertaking, on condition that the worker, in virtue of the nature of the work he undertakes to perform, is not himself under an obligation to pay patent fees "

The same definition is found in the law of Togoland under French Mandate [3], but it is added that the employer " may be French or of a recognised foreign nationality or Native " and that the definition does not include " contracts or agreements to furnish specified foodstuffs or produce, to be purchased by the other party, and the hiring of personal or casual domestic services "

The same definition is contained in the legislation of the Cameroons under French Mandate [4]

No definition is given in the legislation of Indo-China, but according to section 1 of the Order of 25 October 1927, which regulates the protection of Native and foreign Asiatic workers employed under contract by agricultural, industrial and mining undertakings in Indo-China, the Order only applies to wage earners' contracts and the employer may be either a public department or the proprietor of an agricultural, industrial or mining undertaking

Contract legislation in the French colonies does not generally regulate agreements made according to Native custom, and this fact has led to the expression of dissatisfaction in some territories Thus in Indo-China, European employers have several times complained of the unfair competition of indigenous employers who are subject to much less severe obligations as regards the protection of their workers

It will be observed that in the definitions mentioned above the employing party to the contract is described as a particular type of undertaking (agricultural, commercial, industrial or mining), and in most cases the contract is concluded on the employer's side by the management of the undertaking It may happen, however,

---

[1] Decree of 22 May 1936, section 15
[2] Decree of 22 October 1925, section 5
[3] Decree of 29 December 1922, section 2
[4] Decree of 4 August 1922, section 2

that the party which concludes the contract with the worker is not the management but a sub-contractor who has himself made a written or verbal contract with the management to furnish labour, materials or products, or all three This case frequently occurs in Indo-China, where the worker does not deal directly with the management but with a sub-contractor known as a " tâcheron " or " cai-tâcheron " (i e a Native jobber) The question who is responsible for the legal obligations of the employer towards the worker, and particularly for the payment of wages, arises in this case It has frequently happened that the jobber becomes insolvent and that the workers have no means of recovering the wages due to them

In order to prevent this kind of abuse the Decree of 30 December 1936 regulates sub-contracting in sections 28 to 30 on the following lines if the jobber becomes insolvent, the principal employer becomes responsible for the payment of wages and for the fulfilment of the obligations prescribed in the legislation in force, the jobber must post permanent notices in his factory, shop or works, in French and the Native language, showing the name and address of the principal employer and the minimum rates of wages, the jobber must also deliver to each worker a work-card issued by the employer and containing a summary of the same information A list of jobbers must be kept by every undertaking, and the employer remains civilly responsible at common law for the fulfilment of his legal obligations by the jobber

Another problem which arises in connection with the labour contract in some French possessions is that of the collective contract Generally speaking, under French legislation, the contract is individual, i e. a separate agreement must be made with each worker But in French Equatorial Africa the Decree of 4 May 1922 provided that the Governor-General might by order determine the conditions under which an employer could make a common contract with Native chiefs, the Governor-General stated, however, in a Circular of 11 February 1923, that he had postponed " until a later date the issue, if such issue were necessary, of the order relating to collective contracts ", and in fact no such order appears to have been issued

Recently (Decree of 22 September 1936) provision has been, made in French West Africa for the possibility, by way of exceptions of " common contracts " Such contracts may be made in caser where workers engaged by the same employer undertake, unden the terms and conditions of the contract identical obligations in

respect of clearly defined employment, for the same period and in the same place, and will enjoy identical rights This form of contract does not, however, involve the collective responsibility of the workers towards the employer, each worker is at liberty to make use of his right to withdraw from the contract A model common contract was published in an Order of 14 November 1936 Such contracts must, it may be noted, be submitted for administrative approval

There are two other forms of contract in French colonies which are closely related to the labour contract, i e the apprenticeship contract, and the *metayage* contract It is unnecessary to describe these forms of contract as they are not included in the scope of the question on the Agenda, but they are mentioned because they are associated in French colonial legislation with the wage-earning labour contract and because of the possible repercussions of changes in labour contract legislation on these forms of contract The apprenticeship contract in French Equatorial African legislation, for instance, is regulated under the same Decree of 4 May 1922 which regulates the wage-earning labour contract [1] In Indo-China, provisions relating to apprenticeship appear for the first time in the laws of the colony in Chapter II of the Decree of 30 December 1936

Metayage contracts, when concluded between Europeans and Natives [2], are being brought under regulation in some French possessions by measures extending to them, *inter alia*, some of the provisions relating to labour contracts [3]

Reference was made above, at the conclusion of the description of recent trends of French colonial labour legislation, to the present tendency to dispense with the long-term contract This tendency will appear more clearly in the following account of the situation in the principal French possessions, although it will also be observed that the contract question remains of considerable importance in some territories

In *French Equatorial Africa*, two circumstances led to the employment of contract labour on a relatively large scale in post-war years the development of forestry undertakings in Gaboon and the building of the Congo-Ocean railway The railway is

---

[1] See also Order of 13 September 1926, Circular of 20 December 1926, and Order of 14 September 1928

[2] Contracts between Natives have not yet been subject to regulation, but are governed by Native custom

[3] See, for example, the Madagascar Decree of 16 February 1932

now finished, but the forestry undertakings still employ a considerable number of workers under contract, although the number seems to be below the 25,000 employed in 1929 The labour contract legislation, formerly contained in a Decree of 7 April 1911, was amended and supplemented by the Decree of 4 May 1922 now in force [1] The special characteristic of the legislation of this colony is the extent of administrative intervention in the conclusion and execution of contracts, the reasons for this degree of intervention are to be found in the backward state of the population, which is considered to necessitate active participation by the administration in fixing the conditions of the contract

In *French West Africa*, in 1935, the total number of wage earners employed was recorded as 178,908, of whom 38,320 in the public services and 140,588 in private undertakings Of this number, however, only 23,608 were bound by written contracts (823 in the public services and 22,785 in private undertakings) Small as is this figure—particularly in a territory with some 14 5 million inhabitants—it represents a considerable increase as compared with 1934, when the number under contract was 8,792

The workers employed under contract in 1935 were divided as follows among the colonies of French West Africa: Dahomey 315, Senegal 209, Niger 7, Sudan 74, Guinea 1,236, Ivory Coast 21,367 Contract labour may be said, therefore, to exist only in the Ivory Coast colony In this colony, however, as in the others, there is a strong tendency for the Natives to prefer the verbal agreement This tendency is strengthened by the experience of the workers who migrate temporarily in considerable numbers to the neighbouring British territories—especially the Gold Coast—where the verbal agreement is the rule On their return to French West Africa these workers show themselves averse to long-term contracts and mark their preference for a system of verbal agreements on a monthly basis and renewable, and payment of wages weekly or fortnightly without any system of deferred pay As to the numerous agricultural workers (about 60,000 to 70,000)—the so-called "navetanes"—who emigrate every year from the Western Sudan and Upper Guinea to Senegal and the Gambia for the groundnut season, they enter into a form of verbal agreement which combines some of the characteristics of the hiring of services and of farming

---

[1] Reference should also be made to the Order and Circular of 11 February 1923, and to the Orders of 20 January 1927, 7 April 1927 and 21 December 1935

The contract legislation of French West Africa is contained in a Decree of 22 October 1925 and an Order of 29 March 1926 The essential feature of this legislation is that the contract, except in the case mentioned below, is not required to be in writing whatever the length or the conditions of the employment, moreover, if the parties resort to the written contract, the visa of the administration is not required and is only given on the application of one of the parties A written contract, subject to administrative supervision, is however required when the worker is engaged by an undertaking carrying out public works for the Government of French West Africa or of one of the provinces

The number of indigenous workers employed by private undertakings in the *Cameroons under French Mandate* increased from 18,000 in 1926 to 20,900 in 1933, to 32,603 in 1934 and to 43,261 in 1935 Employment under contract remained, however, exceptional only 1,159 contract workers being recorded in 1935 The legislation regulating contract employment is contained in the Decree of 4 August 1922, as amended by Decrees of 9 July 1925 and 13 February 1926 Under the provisions of these Decrees, the written contract and administrative supervision are only compulsory in the case of workers proceeding to undertakings situated outside their home subdivisions

In *Togoland under French Mandate*, contract labour has almost entirely disappeared Practically, only the public services employ workers under contract, the number of Native workers permanently employed by private agricultural and industrial undertakings was only 495 in 1935 The annual report for the year 1931 attributed the decline in the use of contract labour to the following causes (1) the excessive severity of the conditions and obligations imposed on the employer (travelling expenses, bonuses on completion of work), (2) non-fulfilment of contractual obligations by the workers, who were easily able to avoid the execution of the contract by emigrating to neighbouring foreign territories, (3) superabundance of " free " labour The contract legislation is contained in the Decree of 29 December 1922 and the Order of 19 May 1928 which lays down the detailed measures of application

Labour legislation in *Madagascar* oscillated for a long time between freedom and compulsion, but the principle of administrative pressure to induce Natives to undertake contract employment was always retained, hence the Natives show a certain fear

of concluding contracts Although, at present, almost all the Native workers are permanently employed, they refuse to sign contracts There are no official statistics, but it is estimated that the number of contract workers does not exceed a few thousands

The fundamental provisions of the labour legislation of Madagascar are found in the Decree of 22 September 1925 [1] A comparison of the French laws of continental Africa with the Madagascar legislation shows the latter to be less liberal in some respects; this is the case, in particular, in regard to administrative intervention in recruiting, penal sanctions for desertion, and the more severe repression of vagrancy On the other hand, the Madagascar legislation has wider application Although the contract is only required to be in writing and submitted to the visa of the administration when the engagement is made with the assistance of the Labour Office or of an officer of the administration, or when the engagement is for a period exceeding three months, the general provisions of the Decree of 22 September 1925 are applicable to all permanent workers whether bound by a verbal or a written contract, by " permanent workers " are meant workers who hire their services for an effective and consecutive period of at least one month

Fresh legislation relating to the labour contract was promulgated in *French Somaliland* by a Decree of 22 May 1936, which reproduces most of the provisions of the Madagascar legislation Previously, the only law in force was the Order of 12 September 1933 which provided for the issue of a work-book to every employed Native According to this Order, the maximum period of service was one year, the Decree fixes a maximum of two years Under the Order, the rupture of the contract without due motive by the worker rendered him liable to imprisonment, the Decree authorises this penalty only for sudden and unjustified breach of contract Disputes concerning the contract were subject to the jurisdiction of the ordinary courts, while the Decree provides that they be heard by an arbitration court

---

[1] See also two Orders and a Circular of 30 December 1925 The Decree of 22 September 1925 was amended by Decrees of 3 November 1928, 7 January 1929, 14 January and 8 April 1936 The Circular of 15 February 1928 on the registering of contracts, the Circular of 20 April 1928 on the administrative supervision of contracts, and the Circular of 8 December 1936 should also be consulted The Decree of 22 September 1925 has been made applicable to workers from Madagascar engaged in Reunion by a Decree of 10 February 1937

In *Indo-China*, the relations between Native employers and workers are governed by Annamite law, the relations between European employers and Native workers are subject to two differing systems of regulation, the one applicable to contract labour and the other applicable to "free labour" Generally speaking, the contract system applies only in the case of workers engaged for employment in south Indo-China or in other territories

It is an exception for workers in Tonkin and Annam to sign contracts for employment in local undertakings The density of the population is such that there is no shortage of "free" labour for these undertakings and recourse to the written contract is unnecessary Except the skilled workers, who are usually paid monthly, the workers are paid by the day or the task, and there are neither written agreements nor administrative intervention

In Cochin-China and Cambodia the labour force includes (*a*) Natives and foreign Asiatics engaged locally, and (*b*) Natives of Indo-China recruited in Tonkin or North Annam and foreign Asiatics (Chinese and Javanese) recruited either in their own countries or in other parts of Indo-China The first category are generally "free" workers, i e they are engaged under verbal agreements in accordance with local usage The second category of workers enter Cochin-China and Cambodia under written contracts, they are usually employed by the medium-sized and large European undertakings

The contract system has never applied to more than a small proportion of the workers in Indo-China In 1929, for example, the total number of Native wage earners employed in agricultural, commercial, industrial and mining undertakings was 221,052 Of this number only about 40,000 were employed under contract

The fundamental labour law of Indo-China is the Order of the Governor-General of 25 October 1927 This Order contains 101 sections, and covers the whole range of Native labour regulation

Under the "free" labour system, the agreement between the parties is subject only to the provisions of the common law, the agreement is usually verbal, made for a few days or weeks, and its rupture does not involve penal sanctions Nevertheless, the Order of 10 February 1936, which made compulsory in all parts of Indo-China the issue of a work-book to every Native or foreign Asiatic over the age of 18 years employed under a verbal or written contract as a domestic servant or as a worker in town or country, punishes the cessation of service by the worker without the giving of due notice by imprisonment of from one to five days

or a fine from 1 to 15 francs, or both of these penalties The new regulations for " free " labour (Order of 30 December 1936) will abolish these penalties and bring into operation a system for the regulation of the hiring of services very similar to that existing in France

Finally, it may be noted that for Javanese labour the Orders of 8 March 1910 and 20 May 1913, which were drafted in agreement with the Government of the Netherlands Indies, remain in force, under their provisions, contracts are concluded in the home territory in accordance with the rules and regulations in operation in the Netherlands Indies

Labour contracts in *New Caledonia* are differently regulated in the case of (1) Pacific islands Natives, (2) Asiatic immigrants (Javanese, Indo-Chinese, etc) Pacific islands Natives come under the Order of 4 October 1929, in accordance with which the Chief of the Native Affairs Service in Noumea receives the engagement and re-engagement contracts of Natives who voluntarily enter employment, supervises the fulfilment of the contract, and takes the necessary measures for the repatriation of the workers, contracts may not be made for a period exceeding two years The immigrant labour is controlled by an Immigration Service, to which was attached, in 1927, a mobile inspection service to supervise the carrying out of contractual obligations A recent Decree of 24 December 1936 has supplemented and codified the law relating to immigrant labour Previously the recruitment and engagement of immigrant labour was carried out through the Agricultural Syndicate of New Caledonia, a branch of the Noumea Chamber of Agriculture Since the dissolution of this Syndicate, the control of immigrant labour has been undertaken by the administration, and the conclusion of contracts is directly supervised by the Chief of the Immigration Service In 1929 there were 6,933 Indo-Chinese and 6,602 Javanese workers in New Caledonia, this figure has fallen considerably since 1930

ITALY

The following account of legislation and practice relating to labour contracts in the Italian colonies will only deal, as regards East Africa, with Eritrea and Italian Somaliland As far as is known, the legislation that has been provisionally applied in the territories recently annexed to the Italian Colonial Empire is that

of these two colonies Section 63 of the Royal legislative Decree of 1 June 1936, No 1019, relating to the administrative organisation of Italian East Africa [1], provides that, as far as is compatible with local conditions and until special measures have been promulgated, the laws, decrees and regulations issued for Eritrea or applied in this colony are to apply also in the governments of Amara and Addis-Ababa, while those issued for or applied in Italian Somaliland are to apply in the governments of Harrar, Galla and Sidama

The labour contract question differs considerably in Libya, Eritrea and Italian Somaliland owing to the demographic, economic and other differences between these territories, but they have one feature in common the relatively small extent to which long-term contract labour is employed In Eritrea and Somaliland this situation may be due to the small extent of development of industries requiring wage labour, in Libya, the more numerous undertakings employ local labour, the conditions of employment of which are to a certain extent comparable with those of immigrant Italian workers In all three territories, the legislation on the labour contract is of a simple character, and the Italian Government has for some time past been occupied with plans for its amendment In 1934 a Commission was appointed in connection with the Ministry for the Colonies in order to study labour problems in Italian overseas possessions One of the first results of the work of this Commission was the extension to Libya, in 1935, of the Italian system of syndicates and corporations, and, although this measure primarily affects Italian workers, it is not without importance for indigenous workers

Indigenous labour in *Libya* is employed mainly in the coastal regions by European agricultural concessions and, to a lesser extent, maritime and industrial undertakings Labour agreements are generally made without any special formalities, in agriculture, in particular, the agreements are made in accordance with local usage Amongst themselves the Natives are generally satisfied with a verbal agreement , only exceptionally do they have recourse to the services of a notary Owing to the shortage of labour in periods of intense agricultural activity, the European agricultural undertakings have to adapt themselves to local usage and conclude with the workers contracts similar to contracts between

---

[1] *Bollettino Ufficiale del Governo dell' Eritrea*, 14 June 1936, No 28 (extraordinary)

Natives, usually, these contracts provide for a form of participation [1]

Since the extension to Libya of the Italian system of syndicates and corporations, the Governor-General of the colony is empowered to draw up model labour contracts, on the lines of the collective agreements concluded by Italian syndicates, and the employers of Native labour are required to insert the clauses of these model contracts in the individual contracts made by them with their workers [2] Further, the Royal Decree of 21 August 1936, No 1863, extending to Italians and aliens resident in Libya the application of the Italian Act of 1 January 1935, No 112, relating to the work-book, empowers the Governor General to require the issue of a work-book to specific categories of indigenous workers [3] In addition, the Royal Decree of 4 June 1936, No 1337, making applicable to the contracts of Italian and alien employees in Libya the laws governing such contracts in Italy, provides that in principle the relations between indigenous employees and their employers are to be regulated by usage and custom, but that the parties may explicitly agree to come under Italian law [4]

The position of workers employed on public works, such as road making, is generally the same as that of other indigenous workers The labour is usually casual, but in some cases, according to a Decree of the Governor-General of 4 March 1936, these workers conclude written contracts of employment [5]

In *Eritrea* the modes of employment of indigenous workers vary in the different parts of the territory The colony may be roughly divided into three zones the high plateau which forms the watershed between the Nile basin and the Red Sea, the mountain slopes, and the western and eastern plains In the first two zones there are a certain number of concessions and estates of European settlers [6] which employ Native labour on the *metayage* system It is, however, in the plains, where large-scale agriculture has been considerably developed, that Native workers are found in the greatest

---

[1] Cf E Cucinotta *Diritto Coloniale Italiano*, 1933, p 490, and Ferruccio Pergolesi *Sindacalismo Coloniale* (in *Rivista di Politica Economica*, 30 September to 31 October 1936, p 670)

[2] Section 32 of the Royal Decree of 29 April 1935, No 2006, relating to the organisation of syndicates in Tripolitania and Cyrenaica (*Bollettino Ufficiale del Governo della Libia*, 16 December 1935, No 37)

[3] *Bollettino Ufficiale del Governo della Libia*, 11 November 1936, No 35

[4] *Bollettino Ufficiale del Governo della Libia*, 1 August 1936, No 23

[5] *Bollettino Sindacale Corporativo delle Associazioni Fasciste degli Industriali e degli Artigiani della Libia*, March-June 1936, p 26

[6] *La Nuova Italia d'Oltremare*, 1933, pp 649-652

numbers A fairly large number of workers are also employed on development work in the colony, i e railways, roads, hydraulic works, ports, etc

Two modes of employment are dealt with in the laws governing relations between employers and workers (1) the employment of Natives in agricultural concessions under participation schemes where the work is directed by the owner of the concession and his staff, (2) the employment of Natives in industrial and commercial undertakings, building, etc , and as domestic servants, under wage contracts

In the agricultural concessions, the relations between employers and Native cultivators are governed by the land regulations of Eritrea approved by the Royal Decree of 7 February 1926, No 269 [1], the terms of the instruments of concession, the contracts made with the workers, and, in some cases, by custom Under section 31 of the regulations, the owners of the concession must give preference to participation schemes, such schemes may even be made compulsory by the instrument of concession The law does not contain any provisions relating to the length of time for which workers may be engaged, in practice, however, the usual period of engagement appears to be the civil year or the agricultural year European settlers on the high plateau, who own their land, are not subject to the provisions of section 31 of the regulations, they usually employ Natives engaged by the year under *metayage* systems

The employment of Native workers under wage contracts is provided for in the Decree of the Governor of 1 September 1916, No 2631 [2] This Decree affects (1) workers employed in commercial and industrial undertakings, building, etc , (2) domestic servants For the first group, the Decree distinguishes between permanent employment, which is regulated, and temporary employment, which remains unregulated - Section 7 defines " permanent employment " as employment for a period of at least one month, for important undertakings, such as railway building, public works, industrial establishments, etc , the contract must be made for a period of at least three months Domestic servants must be engaged for at least one month The Decree contains provisions relating to the work-book, the contents and cancellation of contracts, and penal and other sanctions for breaches of the law or of contractual obligations

[1] *Gazzetta Ufficiale*, 2 March 1926, No 50
[2] *Bollettino Ufficiale del Governo dell' Eritrea*, 7 September 1916, No 36

In *Italian Somaliland* the principal undertakings employing Native labour are the agricultural concessions in the south Some Native labour is also employed by industrial undertakings in the north, such as the salt-works of Ras Hafun The labour employed by the concessions comprises (*a*) wage earners settled with their families on the concessions (*b*) Native families engaged from year to year, who undertake to cultivate certain areas of land on a basis of 50 per cent food crops and 50 per cent export crops, (*c*) casual workers The last-named are only engaged when extra labour is needed and, as the construction of roads, irrigation canals, etc , is completed, their number decreases According to the latest figures in the possession of the International Labour Office, the number of Native families settled on the concessions was 4,000 in the Genale district and 2,400 in the Scidle region [1]

The law relating to indigenous labour contracts is contained in the Decrees of the Governor of 10 May 1929, No 7475, and of 31 July 1930, No 8220 [2] The first of these Decrees made compulsory the use of two model forms of contract for the engagement of Native cultivators for the Genale concessions One of these forms of contract is a wage-earning contract to be used in the case of workers authorised to settle on the concessions on condition that they work five days a week for the undertaking for a specified wage The other is a special type of contract and provides for the allotment to the Native of a certain area to be planted as to half its extent with food crops and as to the other half with export crops, the cultivation of both parts is under the technical direction of the concession management, but while the export crops are received by the undertaking, the food crops are the property of the worker Although these model forms of contract were introduced for Genale, they are also used in other parts of the colony, the form of participation contract used by the most important undertaking in the territory is, however, somewhat different [3] Breaches of contract by the employers are punishable under the Italian Penal Code, offences by the workers render them liable to the penalties provided in sections 76 and 79 of the Regulations relating to the judicial organisation of Italian Somaliland [4]

---

[1] *La Somalia Italiana*, January-June 1934, p 14

[2] *Bollettino Ufficiale della Somalia Italiana*, 31 May 1929, No 5, and 21 August 1930, Supplement to No 6

[3] Giulio Rapetti *Il contratto di colonia adottato della Società Agricola Italo-Somala* (in *Rassegna Economica delle Colonie*, January-April 1936, pp 97-108)

[4] Royal Decree of 8 June 1911, No 937 (*Gazzetta Ufficiale*, 9 September 1911 No 211)

The Decree of the Governor of 31 July 1930, No 8220, issued Regulations concerning Native industrial labour, by which is meant labour employed otherwise than in agriculture The regulations fix the rates of wages of the various categories of workers, forbid their engagement otherwise than through the labour offices established at the headquarters of district commissioners and provide for the issue to each worker, according to his category, of a work-book or work-card The worker who refuses to fulfil the obligations he has undertaken or is guilty of serious offences in the execution of his work is liable to punishment under sections 76 to 79 of the Regulations relating to the judicial organisation of the colony Employers, whether European or assimilated, who are guilty of breaches of the 1930 Regulations, are punishable under the Italian Penal Code

JAPAN

In the *South Sea Islands under Japanese Mandate* Native labour is only employed as a permanent labour force on the Government phosphate mines of Angaur The labourers are all men and numbered only 379 in June 1935 Conditions of employment are defined by Government rules and regulations For all Native workers in the Japanese islands contracts for more than one year with Japanese or foreign employers are invalid unless approved by the chief of the competent Branch Bureau Government reports state that assent may only be accorded if the Government officer considers, after investigation, that there are no objectionable points in the contract it is also stated that in practice no such contracts have been concluded

LIBERIA

In Liberia there is little development requiring a permanent labour force except on the rubber plantations

The recruiting of labour for employment under contract in the Spanish colony of Fernando Po was in 1914 the subject of a treaty between Liberia and Spain The treaty came to an end in 1927 The labour traffic, however, was continued by agreement between the Guinea Agricultural Syndicate and a group of Liberian citizens Following the gross abuses commented on by the 1930 International Commission of Enquiry, emigration was stopped by the Government of Liberia and an Act of 15 December 1930 now prohibits the recruiting of workers for foreign employment

Within Liberia an Act of 1912 provided for the establishment of a Labour Bureau under the Department of the Interior, the object of which was to " regulate and supervise the labour situation, to procure labourers and to protect the rights of such labourers engaged by Liberians and foreigners within the Republic " The Act made provision for the witnessing of contracts between workers and employers or labour agents, the encouragement of chiefs to furnish labour for farming and other undertakings, the keeping of records and the safeguarding of wages, allowances and other conditions of employment It was also provided that " Nothing in the Act shall be construed to compel labourers to engage themselves to work under the provisions of this Act only " According to the International Commission of Enquiry, however, the Labour Bureau was not made operative until 1926 " when it was regarded by the Government as a means of regulating and keeping under control the labour supply from the interior upon which the new Firestone Plantations promised to make large demands"

The demands for labour do not, however, appear to have expanded as rapidly as was expected and apparently only a few thousand workers are now employed by the plantations It appears that these labourers are free to terminate their employment at will The Office has no information whether there is any labour in contract employment in Liberia or whether the 1912 Act remains operative as regards the control of any such contracts The rubber plantations, however, remain a potential source of large-scale employment

NETHERLANDS

Except in certain cases of secondary importance, the legal provisions relating to the labour contract in the *Netherlands Indies* are different for European and non-European workers The provisions concerning non-European workers are found in several separate measures, which, as regards manual workers, i e coolies and craftsmen *(toukangs)*, are of two kinds those applying to both local labour and labour engaged at a distance, and those applying only to labour not locally engaged

The regulations of the first type are represented by three sections relating to the hiring of domestic servants and workers These sections were formerly contained in the Netherlands Indies Civil Code and applied only to Europeans In 1879 their application was extended to non-Europeans, and, since 1 January 1927, they apply only to non-Europeans, new and detailed regulations

covering Europeans were inserted at the same time in the Civil Code in substitution for the three sections in question

These former sections of the Civil Code contain no provisions regarding the form, duration or contents of the contract for the hiring of services, and have no practical interest except in cases of cancellation of contracts before the expiry of the prescribed period of service They apply throughout the Netherlands Indies, and in Java and Madura they are the only provisions regulating the labour contracts of non-European workers

The regulation of contractual relations between employers and indigenous workers in Java and Madura was formerly more elaborate and included provisions concerning the formalities for the conclusion of contracts, conditions of labour and penal sanctions In 1877, however, the States General in the Netherlands declared against penal sanctions except in the case of workers transferred from their home districts for employment in distant areas, the result was the abolition in 1879 of penal sanctions in Java and Madura, where, owing to the density of the population, local labour was almost always available The other special provisions governing contracts in these islands were repealed in 1903, in practice, they had not been applied to any extent for a long time

The almost complete absence of legal provisions relating to the hiring of services, the abundance of labour, and the fact that, for many Natives, wage-earning employment, although an important source of income, is not the only means of subsistence, give great elasticity to the relations between employers and workers in Java Written contracts are rare, except for some classes of workers in the sugar industry [1], and in the tobacco plantations in the indigenous principalities in central Java [2] In practice, engagements are always for indefinite periods, and most of the workers in agricultural undertakings are casual labourers on task work Labour is retained by a system of advances of wages, for the repayment of which the employer sometimes makes responsible not only the individual worker who has received the advances but also the gang to which he belongs Written contracts are sometimes concluded in the presence of a village chief or other indigenous official, in order to impress the worker with the binding character of his obligations, sometimes the terms of verbal contracts are also explained

---

[1] Ph Levert *Inheemsche Arbeid in de Java Suikerindustrie*, 1934, p 152
[2] P dr Kat Angelino *Vorstenlandsche Tabaksenquête*, 1929 (Publication No 5 of the Batavia Labour Office), pp 61-63

in the presence of indigenous officials [1] An enquiry made in central Java in 1928 revealed cases in which, in order to intimidate the workers, penal sanction clauses had been inserted, although they had no legal value [2]

The three former sections of the Civil Code already mentioned apply also in the Outer Provinces [3], both to local and immigrant labour For local workers, who are usually engaged on verbal agreements as casual labourers, these sections are practically the only legal provisions applicable For immigrant workers, the sections represent the *lex generalis*, co-existent with them, or replacing them, are the special regulations for immigrant workers already mentioned These regulations apply only in the Outer Provinces, where, owing to the shortage of local labour, the undertakings have to rely almost entirely on immigrant workers

The special regulations for immigrant labour apply only to medium-sized and large undertakings They are of two kinds those applicable to penal sanction contracts, and those regulating the employment of " free " labour

At present, penal sanction contracts are regulated by the Coolie Ordinance 1931-1936 [4], which applies throughout the Outer Provinces, and two similar measures the application of which is limited to the Chinese employed by the Banka and Billiton tin mines [5] Under the Coolie Ordinance, only those agricultural and industrial undertakings which, in the opinion of the Director of the Labour Office at Batavia, do not come within the category of small undertakings may employ workers under penal sanction contracts Further, penal sanction contracts may only be concluded with Natives or foreign orientals coming from Java or Madura, a foreign country or another Outer Province The Ordinance requires contracts to be in writing, and contains detailed provisions concerning the form, contents, duration and termination of contracts, the repatriation of the worker and other conditions of employment It does not define the labour contract explicitly, in all the Native labour legislation the labour contract has implicitly the meaning attributed to it in the Netherlands Indies Civil Code, i e a contract

---

[1] Ph Leyrer *Loc cit* P de Kat Angelino *Op cit*, p 62

[2] P de Kat Angelino *Op cit*, p 63

[3] The Netherlands Indies are divided into two main parts the first comprises Java and Madura, the second consists of the Outer Provinces, i e all the other islands of the Archipelago, the most important being Sumatra, Borneo, Celebes, the Sund islands (Bali, Lombok, Timor, etc), the Moluccas and Western New Guinea

[4] *Staatsblad van Nederlandsch-Indie*, No 94 of 1931 and No 545 of 1936

[5] *Staatsblad van Nederlandsch Indie*, No 218 of 1927 and No 183 of 1932

whereby one of the parties (the worker) undertakes to work for a specified period, in return for a specified wage, in the service of the other party (the employer), the particular nature of different types of labour contracts is left to be deduced from the provisions regulating them The three former sections of the Civil Code do not apply to workers contracted under the Coolie Ordinance

The practical importance of the Coolie Ordinance has greatly decreased in recent years, because the percentage of workers employed on a " free " labour basis, i e under contracts which do not provide for penal sanctions, is being steadily increased Whereas, at the end of 1929, 407,397 or 76 2 per cent of the 534,533 workers employed by the medium-sized and large undertakings of the Outer Provinces were bound by penal sanction contracts [1], the number had fallen to 54,103 out of 263,458 (or 20 5 per cent) in 1932 [2], and at the beginning of 1936 the percentage of penal sanction contract workers was only 6 5 [3]

The rapid decline in the use of the penal sanction contract is due partly to the important amendments to the existing law made in 1931, and partly to certain special circumstances The nature of the recent changes in the law will be described below, of the special circumstances the first was the economic crisis which opened in 1929 The fall of prices of exports forced employers to take drastic measures to reduce costs and among these measures were wage reductions and the wholesale discharge of workers These measures could be more easily and speedily applied to " free " workers than to workers under penal sanction contracts who were more effectively protected by law, and this experience considerably stimulated the employment of " free " labour A second circumstance was an amendment of the customs legislation of the United States of America, which led the tobacco companies of the East Coast of Sumatra to abolish the penal sanction system on their plantations at one stroke in order to avoid the possibility of the closing of United States markets to their produce This decision affected some 60,000 workers Its effects were consolidated in June 1932 by the insertion in the Coolie Ordinance of a new clause providing that the provisions relating to penal sanctions for non-observance of his contractual obligations by the worker, and the provision permitting workers who had illegally absented themselves

---

[1] *Verslag van de Arbeidsinspectie voor de Buitengewesten*, 1929, Appendices 4 and 5

[2] *Revue statistique annuelle des Indes neerlandaises pour* 1932, p 179

[3] *Bijlagen Handelingen Volksraad*, 1935 to 1936, Onderwerp 144, Stuk 3

to be brought back to the undertaking, were not to apply to workers employed by undertakings the management of which had made an explicit declaration renouncing the right to prosecute for this class of offence

The revision of the law which was undertaken in 1931 crowned the success of efforts made since the beginning of the century to secure the elimination of the penal sanction contract system The 1931 Coolie Ordinance applied to the whole of the Outer Provinces, replacing the separate Ordinances for each of the provinces and making important changes in their provisions The Ordinance declared that the abolition of the penal sanction contract system was the aim of Government policy, and provided for the gradual realisation of this aim The method adopted was to oblige employers from 1 January 1932 to employ an increasing percentage of "free" workers The Ordinance also provided for its own amendment in 1936, and thereafter every five years, in order to restrict further the employment of workers under penal sanction contracts or to abolish it completely In accordance with this provision, amendments were passed in 1936 adding the following restrictions (1) suppression of penal sanctions in re-engagement contracts, (2) reduction of the maximum length of penal sanction-contracts from three to two years, (3) abolition of penal sanction contracts for workers employed in commercial undertakings, and in the building and working of railways and tramways, (4) agricultural and industrial undertakings, which alone remained authorised to conclude penal sanction contracts, to be obliged to reduce the percentage of workers so employed according to the method prescribed in 1931 The result will be that, for the great majority of undertakings, the possibility of employing penal sanction labour will expire between the years 1940 to 1946

As already mentioned, the above restrictions apply in all the Outer Provinces It should, however, be mentioned that the Government has recently declared that special provisions permitting the employment of workers under penal sanction contracts may be necessary in New Guinea, where development presents special difficulties

"Free" labour in the Outer Provinces is regulated and protected to some extent by an Ordinance of 1911 [1] This Ordinance applies to all workers, not belonging to the aboriginal population of the Province of employment, who are employed, otherwise than under

[1] *Staatsblad van Nederlandsch-Indie*, No 540 of 1911

penal sanction contracts, in agricultural, industrial or commercial undertakings, other than small undertakings, or on public works or the building or working of railways and tramways At the same time, " free " workers are subject to the three former sections of the Civil Code mentioned above

The 1911 Ordinance differs from the Coolie Ordinance, 1931-1936, and the Chinese labour regulations of Banka and Billiton, in that its regulative provisions are of a very summary character " Free " workers are not required to have a written contract unless they have been recruited in Java or Madura and in the case of first contracts, this provision, moreover, is not contained in the 1911 Ordinance itself, but in the 1936 Ordinance relating to recruiting When " free " workers spontaneously offer their services or enter re-engagement contracts, the 1911 regulations only oblige the employer to register certain details of the engagement, and the provisions relating to conditions of work deal only with payment of wages, advances, repatriation, housing and medical assistance As " free " labour is expected to replace penal sanction contract labour entirely within the near future, the Government has had under consideration for some time the amendment of the 1911 Ordinance in order to provide more adequate protection for the workers

In practice, written contracts are often concluded with " free " workers, even where they are not required by law, this is the case with most of the undertakings affiliated to the large employers' organisations on the East Coast of Sumatra The period of engagement differs considerably according to the class of workers concerned and may vary from one day to two or three years It should also be mentioned that, in view of the gradual abolition of penal sanctions and the possibility of increased labour turnover, a special institution called a Registration Office was established in 1931 at Medan on the East Coast of Sumatra The object of this Office is to diminish the possibility of " crimping ", with this object in view, any employer who engages locally a worker whose immigration expenses were paid by someone else is bound to make to the Office a payment which increases when the worker has abandoned his previous employment before the expiry of the stipulated period

A further type of Netherlands Indies labour legislation remains to be described that regulating the engagement of indigenous labour in the Netherlands Indies for employment in other territories

Under the Ordinance of 9 January 1887 [1], as amended by the

[1] *Staatsblad van Nederlandsch-Indie*, No 8 of 1887

Ordinance of 8 December 1936 [1], the recruiting of coolies and craftsmen for employment abroad in commercial, agricultural or industrial undertakings is prohibited Nevertheless, in special cases and for important reasons, the Governor-General may lift this prohibition on condition that the recruiting always takes place on Java or Madura In practice, this exemption is never granted except for Dutch Guiana and various foreign territories to which Netherlands Indies workers emigrate more or less regularly, i e the Straits Settlements, the Federated Malay States, Sarawak, North Borneo and New Caledonia

Except in one case which will be mentioned below, workers recruited for employment abroad must conclude a written contract before leaving Java This rule applies whether or no the contract provides for penal sanctions Since the Governor-General may refuse to permit recruiting or permit it only subject to certain conditions, he is in a position to exercise a decisive influence in the determination of the respective rights and obligations of the contracting parties In practice, when labour is to be recruited for a foreign territory, the Governor-General issues a model form of contract which must be used in all cases covered by the permit to recruit, and, as the permit is only granted for a specified number of workers and for twelve months, the Governor-General is able to modify the model form of contract, if necessary, when granting a new permit

In the case of Dutch Guiana, the Governor-General has lifted the prohibition to recruit for an indefinite period and for an unspecified number of workers, the model form of contract has therefore been given a more permanent character [2]

As already mentioned, the requirement of the written contract does not apply in all cases Owing to the abolition in the British territories employing workers from the Netherlands Indies of long-term contracts and their replacement by verbal agreements for periods not exceeding one month, the Ordinance of 1887 was amended in 1936 to empower the Governor-General to permit exceptions to the rule requiring contracts to be in writing In such cases, the workers must be brought, before departure, before the competent official in order that the terms of the verbal agreement they will be asked to make on arrival in the foreign territory may be explained to them They must also be given a document setting out the principal conditions of their future employment,

[1] *Ibid*, No 650 of 1936
[2] *Bijblad op het Staatsblad van Nederlandsch-Indie*, Nos 9703 and 10036

the Governor-General may, of course, intervene in the determination of these conditions

The engagement of workers from the Netherlands Indies for employment abroad has not given rise to formal agreements with the Governments of the employing territories, in some cases, however, there have been negotiations Thus negotiations with the British authorities in Malaya led to the abolition of the long-term contract with penal sanctions for Javanese workers Agreement was also reached in the course of these negotiations on certain general conditions for the employment of Javanese as "free" workers, and these conditions were incorporated in the labour legislation of the various Malayan territories The engagement of workers for New Caledonia is always made in the name of the administration of that colony, and, consequently, any exchange of views as regards labour conditions must necessarily take place with the Government As regards penal sanctions, it may be mentioned that the question of their abolition now only arises in respect of New Caledonia and Dutch Guiana

In *Dutch Guiana* (Surinam), the labour contract legislation applies in principle to workers and employers of all races It comprises the following measures (1) sections 1613, 1614 and 1615 of the Civil Code of the colony, (2) the Royal Decree of 22 March 1872, No 27 (*Gouvernementsblad*, No 8 of 1872), (3) the Labour Ordinance of 24 June 1911, the amended text of which was published in *Gouvernementsblad*, No 37 of 1914, (4) some provisions of the Police Regulations of 29 November 1915 (*Gouvernementsblad*, No 77 of 1915)

The sections of the Civil Code relate to the hiring of services of domestic servants and workers, their contents are identical with those of the three sections of the Netherlands Indies Civil Code mentioned above, they are superseded in many cases by the other regulations

The Royal Decree of 22 March 1872, No 27, concerns workers brought into the colony by the administration All immigration of labour, whether for private or public employment, is organised by the administration, and the Decree empowers the administration to recruit workers abroad for plantations, industrial undertakings, public works and public utility undertakings, in practice, recruiting only takes place for employment in the fields and factories of the large plantation undertakings [1] The employment

[1] E Snellen *De aanvoer van arbeiders voor den landbouw in Suriname*, 1933, p 45

of immigrant labour began after the abolition of slavery in 1863, and for many years the immigrants were British Indians Javanese began to be employed about 1890 and, after Indian immigration ceased in 1916, Javanese entirely replaced Indians as contract workers The last contingent of Javanese engaged under long-term contracts arrived in 1929 In 1930 and 1931, several hundred " free " workers arrived, since then no recruiting has been necessary, as the economic crisis has worsened an already unfavourable economic situation

The administration is a party to all contracts concluded under the Royal Decree of 1872, the workers are distributed by the administration to employers who need labour, and although the employer must fulfil all the obligations towards the worker which the contract imposes on the administration, the latter remains ultimately responsible for the execution of the contract Thus, when the cocoa crisis at the end of the last century led to the closing down of plantations and the discharge of immigrant workers, the administration created employment for the workers on public works [1]

The model form of contract for Javanese workers recruited for Dutch Guiana, to which reference was made above, fixes the period of validity of the contract at five years At the end of this period the worker may sign a re-engagement contract, or return to Java at the expense of the administration, or settle in the colony In the course of time many immigrants, Indian and Javanese, have settled in the country, most of them as independent colonists on State lands, others as " free " workers on the plantations The latter have been encouraged by employers to remain on the plantation by the provision of a family dwelling and a plot of land, the condition being that they work for the undertaking on a certain number of days every week, or during certain seasons such as the coffee-picking season

At the end of 1934 the number of immigrants living on the plantations was 1,336 Indians (479 men, 303 women and 554 children) and 13,102 Javanese (5,188 men, 4,206 women and 3,708 children) The only long-term contract workers remaining were Javanese, their number was 230, all bound by re-engagement contracts for one year The other workers were all " free " workers, under agreements covered by the aforementioned sections of the Civil Code and the relevant provisions of the Police Regulations of 1915

---

[1] G J Staal *Nederlandsch Guyana*, 1928, p 101

It will be seen, therefore, that long-term contract labour is at present of very little importance Its replacement by "free" labour was, however, notably accelerated during the economic crisis when the planters found "free" labour more economical, and it is possible that long-term contract labour will be again employed to a greater extent if and when better trade conditions prevail

The Labour Ordinance of 1911 applies to the contracts of workers employed in prospecting for and extracting minerals, and in various forestry undertakings This employment is in the interior of the country, usually in the virgin forest, the wage earners are of Negro descent and are for the most part engaged at Paramaribo The Ordinance is fairly detailed in regard to the rights and obligations of the employers and workers, it requires the contract to be in writing, it also requires the conclusion of the contract in the presence of a competent official The maximum length of contracts is not fixed, but workers who make contracts for longer than one year have the right to cancel the contract at the end of the annual period of work on condition that they reimburse any sums owing to the employer In practice the workers, who are not accompanied by their families, contract to serve from 90 to 150 days [1] According to a press report, however, the Governor has appointed a Commission to investigate ways and means of enabling the workers to be accompanied by their families, in order to promote family life and permit the workers to remain for longer periods in the interior [2]

The Labour Ordinance of 1911 had at first an imperative character, but successive amendments have made its application more optional At present its application depends in some cases on the existence of an agreement to that effect between the parties, except as regards the provisions relating to medical treatment, such cases are certain types of forestry undertakings, and employment on lands owned by the employer and near which the workers are settled Further, the Ordinance does not apply when the employer has made a written declaration to the Governor that he will grant certain benefits to the workers and their families in case of sickness

The Police Regulations of 1915 contain a chapter relating to contracts for the hiring of services in which are collected a number of provisions of the civil law and some penal clauses The civil law provisions concern the form and length of contracts in certain

[1] G J Staal *Op cit*, p 62
[2] *Nieuwe Rotterdamsche Courant* of 6 March 1937

cases, a written contract is required when a person of Negro descent undertakes employment on a plantation for a period exceeding six weeks

The penal clauses provide that both employers and workers who are guilty of breaches of their contractual obligations are liable to criminal penalties In Dutch Guiana, penal sanctions have existed since the abolition of slavery and have always applied to workers and employers alike Penal sanctions against workers were introduced in the first instance as a means of keeping at work the liberated slaves who, for the first ten years after their liberation, remained under the control of the authorities and were obliged to continue working on the plantations Afterwards, the penal sanctions were applied to the immigrant labour which began to enter the colony In this case, penal sanctions were held to be necessary not only in the interests of the planters but also of the country, it was feared that labour deserters would become vagabonds without any means of subsistence, who would be a burden on the administration, which would have to maintain them or repatriate them at its expense [1]

The penal sanctions system in Dutch Guiana has been very little modified since its introduction, it applies to all contracts for the hiring of services, whatever their length, the nature of the employment or the race of the contracting parties

PORTUGAL

For the purposes of the study of indigenous labour contract legislation, the Portuguese possessions may be divided into (1) the African territories, i e Angola, Mozambique (or Portuguese East Africa), Portuguese Guinea, the islands of San Tome and Principe, and the Cape Verde Islands, (2) the territories in Asia and the Pacific, i e Goa and other settlements in India, Macao, and part of the island of Timor The contract legislation described in this Report concerns only the first group, with the exception that it has also been applied in the island of Timor

The underlying principles of existing Portuguese contract legislation are laid down in the Colonial Act (section 21) and the Organic Charter of the Portuguese Colonial Empire (section 244), which provide that the indigenous labour contract system must be based on individual liberty and the right to a fair wage and

[1] *Surinaamsch Verslag*, 1932, Vol I, p 3, and SNELLEN *op cit*, pp 80-84

welfare measures, while the public authority is only to intervene for the purposes of supervision

The principal law relating to the regulation of the employment of indigenous labour is the Native Labour Code of 6 December 1928, which is supplemented by special regulations issued in the various African colonies Under section 95 of the Code, the administration only intervenes in the conclusion of labour contracts in order to ensure that the Natives are hiring their services freely to an employer of their choice, to supervise the fulfilment of the obligations of the contract, and to give the workers the necessary protection

The Code does not specifically define the labour contract It may, however, be noted that a Portuguese Act of 10 March 1937, No 1952, defines the labour contract in Portugal as any agreement whereby a person undertakes, in return for remuneration, to hire his services to another person, it being understood that, in the performance of these services, he is under the orders, direction and supervision of the other person The Native Labour Code, in section 2, provides that the term " Native " means persons of Negro race or descendants thereof who, by their education and customs, are not distinguishable from the ordinary members of the said race, the Code further deems to be " Native workers " all persons who, being Natives as defined above, are serving another person under a contract for the hiring of services concluded in accordance with the provisions of the Code The term " employer " includes the legal respresentatives of the physical or moral person in whose service the worker is employed (section 7)

The Portuguese Native Labour Code deals in detail with all the questions which arise in connection with the indigenous labour contract the form and contents of the contract, administrative supervision, duration, termination, repatriation, penal sanctions, etc As regards the requirement of contracts in writing, the Code makes a distinction between locally engaged labour and labour recruited for employment outside the curatorial division [1] in which the recruitment takes place In the latter case, contracts must be in writing and must be concluded in the presence of the competent official of the curatorial division, they must also be individual, unless the worker is accompanied by his family Contracts of locally engaged labour, however, may be either verbal or written, if

[1] The supervision of all matters relating to employment of indigenous labour is entrusted in each Portuguese colony to an official called the Curator-General and his assistants, each of whom is in charge of a certain division

written, they must be approved by the authorities of the curatorial division, they may be either individual or collective

The same distinctions appear in the provisions about the length of contracts A contract for service outside the curatorial division in which the worker is recruited must specify the number of months or years of service, and this period may not exceed two years when the employment is within the colony, or three years when the employment is in another territory An exception to this last provision has been made by a Decree of 2 October 1936 No 27063, which fixes four years as the maximum length of service of workers recruited in Angola, Mozambique or the Cape Verde Islands for San Tome and Principe, with the object of encouraging the workers to settle in these latter islands In the case of local labour, if engaged under written contract, the contract must specify the number of months of service and may not be made for a period exceeding one year, a verbal contract may only be made for employment by the day, the week or the month, under the conditions laid down in the Civil Code for domestic service

The Code makes provision for penal sanctions in cases of breaches of contractual obligations, for Native workers, the penalty does not take the form of fines or imprisonment, but that of " correctional labour "

The employment under contract of Natives of a Portuguese colony in another Portuguese colony or in a foreign territory requires special authorisation In the case of Portuguese territories, this authorisation usually takes the form of *modus vivendi*, such as those governing the employment of workers from other colonies in San Tome and Principe Employment in foreign territories is conditional upon the conclusion of treaties, conventions or agreements with the foreign States or territories concerned, such as the Convention between Mozambique and the Union of South Africa and the Agreement between Mozambique and Southern Rhodesia, which have been described above in the paragraphs treating of Great Britain and the Dominions

§ 3 — The Scope of the Question

The scope of the question on the Agenda, as far as concerns the persons affected, would not seem to give rise to any difficulties The title refers to " indigenous workers " The foregoing general summary shows that, in practice, the problems under examination are dealt with in the national legislations as problems arising

mainly in connection with the employment of persons belonging to the indigenous peoples of dependent territories or to the dependent indigenous peoples residing in the home territories of the States concerned The summary further shows that, as stated in the opening paragraph of this chapter, the " indigenous workers " covered by the legislation include in some cases workers from other territories, who, owing to the similarity of the type of labour and the conditions of employment, are assimilated to workers belonging to the indigenous populations

In order, however, that there should be no doubt as to the meaning to be attached to the term " indigenous workers ", it would seem desirable that a definition should be included in the proposed international regulations Such a definition was included in the Recruiting of Indigenous Workers Convention, 1936 (No 50), and, in view of the close connection between that Convention and the proposal now under consideration, it may further be suggested that the same wording should be adopted to define the indigenous workers whose contracts of employment are to be regulated

The definition inserted in the Recruiting of Indigenous Workers Convention (Article 2 (*b*)) reads as follows

" The term ' indigenous workers ' includes workers belonging to or assimilated to the indigenous populations of the dependent territories of Members of the Organisation and workers belonging to or assimilated to the dependent indigenous populations of the home territories of Members of the Organisation '

The determination of the scope of the item on the Agenda, as regards the kinds of contracts which should properly be regarded as " contracts of employment " for the purposes of the proposed regulations, is somewhat more difficult, but it does not seem to admit of any serious doubts

In the first place, the contracts referred to in the foregoing general summary of national legislations by the equivalent terms of " labour contracts ", " contracts for the hiring of services " or " contracts of employment " are practically always contracts of employment of manual workers It may be that in certain cases the national legislation is wide enough to permit the contracting of the lower classes of indigenous clerical workers on the same basis as manual workers However, this is not the general practice, and it would seem in any event to be a matter to be left to the appreciation of the national legislator The workers mainly concerned by the problems under discussion are manual workers, and it is

therefore suggested in the draft list of points for consultation of Governments that the latter should be asked whether they consider that any international regulations that may be adopted should be expressly limited in application to the contracts of employment of manual workers

A second fact which emerges from the general summary of national legislation is that the contracts concerned are mainly wage contracts There are, however, certain kinds of agricultural labour contracts in which, in some cases, the remuneration for the worker's services does not include the payment of cash wages, but takes the exclusive *form of permission* to occupy or use land, in other cases the remuneration includes, in addition to the privilege of occupying or using land, *the issue of rations*, *in still other cases*, the payment of cash wages is an additional, but subordinate, element of the remuneration Would these kinds of contracts properly come within the scope of the regulation of contracts of employment of indigenous workers ?

The answer to this question seems to depend on whether these contracts are primarily contracts of employment Reference was made in the second section of this chapter, in the paragraphs relating to the territories administered by Great Britain and the Dominions, to a case in which Native occupiers of land in Nyasaland pay rent in the form of labour, in this case, any contract under which the Native places his services at the disposal of the landowner would seem to be primarily a tenancy contract, since the labour is proportionate to the rent fixed by a rent board and the Native is free to pay his rent in cash or kind instead of in labour, such contracts would not seem to come within the scope of the regulation of contracts of employment, and the extension to them of labour contract legislation, in so far as they involve the employment of labour, would be a matter for the appreciation of the administration concerned Where, however, the primary object of the planter or farmer in making a contract with a Native, under which the latter is granted the occupancy or use of land belonging to the former for his dwelling, garden and the pasturing of his cattle, is to obtain in return the labour of the Native, the contract seems to be a contract of employment and would *prima facie* come within the scope of the regulation of contracts of employment

The circumstance that cash wages are not paid, or are not the main part of the remuneration, does not seem to invalidate this conclusion In almost all forms of indigenous labour contracts the remuneration is only made partly in cash wages, the rations and

clothing issued to the workers, and the housing and, in some cases, cultivable land provided are in reality part of the remuneration and often an important part The criterion to be applied, therefore, is not whether the worker receives payment in cash in return for his services—the question of the form of the worker's remuneration being immaterial in this connection—but whether the primary object of the conclusion of the contract by the employer is to obtain the labour of the worker

For these reasons it is suggested that the second point on which Governments should be consulted, as regards the scope of the question on the Agenda, is whether the proposed international regulations should apply to contracts of employment, whatever the form of remuneration

Passing reference was made in the general summary of national legislation, in the second section of this chapter, to (*a*) apprenticeship contracts, and (*b*) various kinds of *metayage* and participation contracts There would seem to be no doubt that both these classes of contracts are definitely outside the scope of the question on the Agenda Apprenticeship contracts do indeed involve employment, but they should be made primarily for the purposes of the instruction of the apprentice in the technique of some productive activity and not for the hiring of the services of the apprentice Whatever the repercussions of the regulation of contracts of employment upon apprenticeship contracts, and however necessary regulation of apprenticeship contracts may be, the nature of these contracts is too special to be brought under the international regulation of contracts of employment now proposed It is suggested, therefore, that Governments should be consulted on the need for a formula excluding apprenticeship contracts from the scope of the proposed regulations

No specific formula of exclusion seems necessary in the case of *metayage* and participation contracts These contracts partake of the nature of tenancy contracts and contracts for the delivery of produce, the only case in which they have any of the characteristics of the contract of employment is when the cultivator agrees to work under the orders and at the direction of the landowner The presence of this feature does not, however, affect the primary object of these contracts, and they would not, therefore, appear to be contracts of employment Accordingly, the Office will not suggest the consultation of Governments on the insertion of a provision specifically excluding such contracts from the field of application of the proposed regulations

Another question which must be considered in connection with the scope of the item on the Agenda is whether the regulations should apply to contracts of employment between indigenous workers and indigenous employers. National legislation in this regard varies, in some cases such contracts are subject to the same regulations as contracts between indigenous workers and non-indigenous employers when the contracts are of the same type, in other cases they are ignored by the legislation entirely or specifically left to be regulated by Native law and custom. Mention was made in the preceding section of one case in which European employers have complained of the inequality of the burdens placed upon them by the existing colonial legislation as compared with those imposed upon indigenous employers by Native law and custom. There would seem to be at least a *prima facie* case for including in the scope of contract regulations all contracts of employment of a similar type, whatever the race of the employer, and the Office will suggest the consultation of Governments on the insertion of words making the provisions applicable to both non-indigenous and indigenous employers.

One further point arises in connection with a situation existing in a French possession and possibly in other territories: the practice of permitting the contract to be concluded on the employing side by a sub-contractor or jobber instead of the principal employer. It has been found necessary, in the territory in question, to provide that the principal employer is responsible for the fulfilment of the employer's obligations towards the worker under the contract, and the insertion in the list of points for consultation of Governments of an item covering this situation is proposed.

If the scope of the question on the Agenda is circumscribed as suggested in the preceding paragraphs—i.e. as applying to the contracts of employment by which indigenous workers enter the service of any employer, whether non-indigenous or indigenous, (*a*) as manual workers, (*b*) for remuneration in any form whatsoever, (*c*) otherwise than as apprentices—it may seem unnecessary to insert a specific definition of the term "contracts of employment". It will have been noted, from the summary description of national legislations in the second section, that colonial laws generally do not define the term "contract of employment" but rely upon the common legal acceptation of the meaning of the term, any definitions contained in the colonial legislation usually have the same object as the suggestions made above, i.e. the delimitation of the field of application. In these circumstances, the Office has not

attempted, for the purposes of this item on the Agenda, to devise a generally acceptable definition of " contract of employment "

* * *

Having dealt, in this chapter, with the general nature and scope of the item on the Agenda, and given a general description of the principal systems of indigenous labour contract legislation, it is proposed to proceed to examine the specific problems of contract regulation, beginning with that of the circumstances in which a contract should be required to be in writing

CHAPTER II

CONTRACTS REQUIRED TO BE IN WRITING

In principle, any agreement by which one person undertakes to serve another person in return for remuneration is a contract of employment, whatever may be the stipulated period of service Nevertheless, the national laws regulating indigenous contracts of employment usually distinguish between short-term agreements and contracts under which the indigenous worker binds himself to serve an employer for a more or less long period, i e a number of months or years Contracts for short periods are practically always verbal agreements, made sometimes in accordance with local custom or with the provisions of the common law, sometimes in accordance with regulations of a looser character than those governing long-term contracts On the other hand, contracts for a period of, or exceeding, a given number of months are usually subject to strict guarantees, among which is the requirement that such contracts should be in writing

The Committee of Experts on Native Labour, having regard to this general trend of national legislation as well as to the terms of the resolutions of the International Labour Conference which directed attention to the need for international regulation of long-term contracts, decided to take as the starting-point of its recommendations the idea that indigenous contracts of employment made for a period of, or exceeding, a certain number of months should be required to be written and to confine its further recommendations generally to this type of contract

The long-term contract is mainly used at present for migrant workers and for workers belonging to tribes and peoples unaccustomed to the forms of employment introduced by European enterprise In both cases the national legislator has frequently found that a necessary accompaniment of measures for the protection of the worker and for the control of the labour force is the requirement that the terms of employment between each worker and employer shall be reduced to writing Even though the law regulates the most minute details of employment of contract

workers, it is considered necessary that for each worker separately there shall be a record of the terms of his individual contract The proper working of the system of contract employment depends on the possibility of all parties and the administration knowing the obligations which have been assumed by each individual, and one of the means of ensuring this possibility is the recording in writing of each contract

§ 1 — Law and Practice

The situation in the various territories as regards the requirement that the contract should be in writing is as follows

In *the Belgian Congo, the legislation of which is also applicable in* the *Mandated Territory of Ruanda-Urundi*, the indigenous contract of employment may always be concluded verbally, whatever the length of service agreed upon, there can indeed be in no case a written contract between an employer and a Native worker that is signed by both parties unless the Native is able to read and write

Under the Belgian Congo Decree of 16 March 1922, the worker may, in case of dispute, seek to prove the contract before the competent jurisdiction by any legal means, including the hearing of witnesses In order to assist the worker in proving the contract, the law provides that the employer must deliver to him, on the day of his engagement and whatever may be the period of service stipulated, a work-book containing particulars of the worker and of the employment

The employer has the same means of proving the contract against the worker If, however, the period of service agreed upon exceeds six months, the employer cannot claim enforcement of the contract in respect of the period in excess of six months unless he has signed a document certifying that the worker has freely consented to the contract and unless this document has been visaed by the competent authority, before giving his visa, the latter must explain to the worker the nature of the obligations recorded in the document and must satisfy himself that the worker is a freely consenting party The same procedure is necessary, whatever the period of service, if the conditions of employment provided for in the contract involve certain exceptions to the obligations normally imposed by law on the employer Nevertheless, the aforesaid document is only necessary to prove the contract, and even for this purpose it is not indispensable if the worker confirms the employer's statements or if the employer can prove that the worker refused to present himself to the competent authority in order to enable the employer to obtain the official visa to the document

Belgian colonial legislation, therefore, does not require a written contract, although in certain cases a document drawn up by the employer and visaed by the competent authority is necessary in order to enable the employer to prove the contract against the worker, while the latter must in all cases, irrespective of the length of the contract, be issued with a work-book

In the territories administered by *Great Britain and the Dominions* certain general principles can be traced in the great variety of separate laws

Taking the *British African dependencies* and the *Union of South Africa* as a whole it will be found that the obligation for an employer to enter into a written contract with the worker commonly arises (1) when the length of contract exceeds a certain maximum and (2) in the case of engagement for employment abroad Written contracts may also be obligatory in virtue of the manner of engagement (recruiting) or of the form of employment (mines and industries)

The length of engagement necessitating a written contract, or in other words the maximum legal duration of oral contracts ranges on the continent of Africa from one month to one year

A contract of service which is not in writing is not binding on a worker for a longer period than one month in the East African territories of *Kenya*, *Mandated Territory of Tanganyika* and *Uganda*, in *British Somaliland*, *Northern Rhodesia* and *Nyasaland* Usually the obligation is conditioned, in the case of contracts for a number of working days which are regarded as equivalent to one month, by the provision that such contracts need not be in writing if the days are completed within a certain period In Kenya and Uganda an oral agreement is legal for thirty working days if completed within forty-two days, in Nyasaland for twenty-six working days if completed within forty-two days, in Northern Rhodesia for thirty working days if completed within forty days, and in Tanganyika for thirty working days if completed within sixty days

The most comprehensive statement concerning the obligation to enter into a written contract in virtue of the duration of the contract is contained in the Northern Rhodesian law, which provides that all contracts shall be in writing except (*a*) contracts for any period not exceeding one month, (*b*) contracts for a month or a week, terminable by either party on one month's or one week's notice, as the case may be, given at any time, (*c*) contracts on the ticket system for one ticket of thirty days, (*d*) contracts on the ticket system, terminable from ticket to ticket by either party by giving thirty working days' notice at any time, (*e*) contracts to perform some specific work capable of being completed within one month from the date of commencement

In *Zanzibar* the practical effect of the law is to make written contracts compulsory for engagements in excess of one month All contracts containing no agreement regarding their duration are deemed to be monthly if wages are paid by the month, and in other cases to be terminable at the close of any day

In the British West African dependencies of the *Gold Coast*, *Nigeria* and *Sierra Leone* the maximum validity of oral contracts for employment within each colony is six months Provisions however, permitting the termination of a contract, the duration of which is not expressed, at times ranging from the end of any day to one month's notice, limit the practical validity of unwritten contracts more stringently

In *Southern Africa* the general maximum duration of oral contracts is twelve months In the absence of proof to the contrary contracts are held to be monthly, and, as will be shown, for many classes of workers written contracts are compulsory

The obligation for written contracts in the case of the engagement of labour for employment abroad may be taken as general It is specified in the laws of *British Somaliland*, *Gambia*, *Gold Coast*, *Kenya*, *Nigeria*, *Northern Rhodesia*, *Nyasaland*, *Sierra Leone*, *Mandated Territory of Tanganyika*, *Uganda* and *Zanzibar* In Tanganyika the obligation

applies to engagements for employment outside the district of engagement, and in Uganda it is unlawful for a labour agent to take any recruited worker out of the district of recruiting without a written contract Also, in the case of workers recruited by labour agents, the obligation to enter into a written contract for employment abroad exists in *Basutoland*, *Bechuanaland*, *Swaziland* and *Southern Rhodesia* In the *Union of South Africa* and the *Mandated Territory of South West Africa* the practical effect of the laws appears similar In the Union every labour agent is required to enter into a written contract with every Native recruited by him, and in the Union and in the Mandated Territory contracts made outside the provincial or territorial limits are required to be in writing

It is to be noted that the above obligations cover engagement or recruiting in one territory for employment in another The laws do not oppose the spontaneous emigration of workers without written contracts or require written contracts for immigrant workers as such In territories from which there is an important labour emigration, such as Nyasaland, arguments have been advanced in favour of prohibiting such emigration except under written contracts So far however action of this nature has not appeared practicable

The obligation to enter into a written contract in the case of recruited labour has been touched upon above It exists in the *Union of South Africa*, *Basutoland*, *Southern Rhodesia* and *Kenya*, and is a practical consequence of the short validity of oral contracts in the other East and Central African dependencies In the *Mandated Territory of South West Africa* every employer of a Native labourer on mines and works is required to fulfil this obligation

These laws require to be considered in the light of present practice In the West African dependencies written contracts are exceptional as engagement is usually by the day, week or month In East and Central Africa thirty-day contracts have become the most frequent form of labour agreement In Kenya, in 1935, only 7,580 workers entered into written contracts, and in Tanganyika, in 1936, only 14,222 workers were recorded as being recruited under written contracts In the Union of South Africa written contracts are of greater frequency, being normal for recruited and for mine labour For the bulk of agricultural labour, however, written contracts appear to be exceptional in spite of a recommendation of the Native Economic Commission of 1930-1932 [1] and of arguments advanced on various occasions, notably during the passage of the Native Contract Service Act of 1932

What appears to be the longest validity of oral contracts in British dependencies is to be found in the *Seychelles Islands* Under a 1932 law it is possible for employers to engage labourers verbally on the main island for eighteen months' service on the outlying islands Nevertheless, such agreements have to be made in the presence of a Government

[1] " 393 Many witnesses, both European and Native, advocated the introduction of written contracts to put an end to the large amount of misunderstanding arising from the system of oral contracts Attempts have been made by farmers' organisations to bring this about, but without success Witnesses generally stressed the point that written contracts must be universal, and that any partial system would fail Magistrates invariably favour the introduction of written contracts

" 394 Your Commission considers that the time has come for legislation to be passed to make the completion of a written contract between farmer and tenant obligatory "

officer and in practice written contracts are entered into for periods of six months, while on the main island agreements are usually from month to month

In *Mauritius* home contracts may be oral or in writing Indian workers, however, are not engaged under longer than monthly agreements Engagements for employment abroad must be in writing

The rule requiring written contracts for engagements for more than one month applies in *Hong Kong*

In the British Pacific dependencies the obligation to enter into written contracts is extensive For British subjects in the *New Hebrides* there may be no recruiting or employment of a Native unless the Native has first entered into a written contract In the *British Solomon Islands* an exception is only permitted for adult males engaged in daily employment on plantations situated in, or on vessels belonging to, the Native's district of birth In the *Gilbert and Ellice Islands* all engagements are required to be in writing, except those not exceeding one month for service on the Native's home island In *Fiji* engagements for more than one month are required to be in writing

In the Australian dependencies employment under written contracts is also the general rule, although the facilities for oral agreements are increasing In the *Mandated Territory of New Guinea*, Natives whose homes are within 25 miles of the place of employment may be employed without a written contract Such employment is terminable at any time without notice and the local Government officer may for any reason instruct an employer to cease so employing a Native Otherwise contracts are required to be in writing In *Papua* the employment under oral agreement is permitted of adult male Natives whose villages are within twenty miles of the place of employment, and of adult female Natives whose villages are within four miles In addition, in Papua a Native employed for less than three months need not be under written contract This period is interpreted as the period of actual employment and not the period of any labour agreement In the *Mandated Territory of Nauru* every contract between an employer and a Chinese or Native worker is required to be in writing

In the British West Indian and American dependencies long-term contracts have in all but rare cases become obsolete The provisions of the law are in harmony with the usual British rule making written contracts compulsory for foreign employment and for employment in excess of one month

In *British Guiana* the Employers and Servants Ordinance limits contracts to one month in the absence of any express agreement to the contrary In *British Honduras* any person hiring a labourer to perform bodily labour for a longer period than one month is required to enter into a written contract, written contracts are also necessary for engagement for foreign employment and for workers employed in collecting chicle, the latter appear to be engaged for the season

Written contracts for foreign employment are compulsory in the West Indian dependencies of the *Bahamas*, *Barbados*, *Jamaica*, *Leeward Islands*, *Trinidad and Tobago* and the *Windward Islands* Home contracts in the Windward Islands are required to be in writing if for more than one month In Jamaica and Trinidad, as in British Guiana, the validity of oral contracts is limited to one month In the Leeward Islands contracts are deemed to be either for six days or terminable on fourteen days' notice

In *Spanish* possessions, according to the 1906 Regulations, contracts may not be made for less than one year and must be in writing

In *French dependencies* the laws tend to permit choice of engagement by local custom, by oral agreement or under written contract This tendency, however, is frequently modified by an obligation to enter into a written contract for engagement in excess of a certain period, for service outside the worker's home district, and for agreements concluded with the assistance of a Government authority

In *French Equatorial Africa* the Native may engage by the job, as a day labourer, or as a regular worker The day worker, however, may only be employed in his home district, wages and hours of work being governed by local custom Written contracts are compulsory (1) for engagement exceeding three months, and (2) for employment outside the Native's home subdivision

In the *Cameroons under French Mandate* the written contract is also compulsory for engagements exceeding three months or for employment outside the home subdivision

On the other hand, in *French West Africa* the written contract is only required in the case of workers employed by undertakings working for the State or for the separate colonies of the group Otherwise there is no obligation even on the basis of the duration of the engagement

In *Togoland under French Mandate* written contracts are compulsory for engagements for more than three months

In *Madagascar* the obligation is imposed in respect of engagements for more than three months, and also when a contract is concluded with the assistance of the Labour Office or a Government officer The same obligations exist in *French Somaliland*

In contrast with the general position in Africa, the law in *Indo-China* makes no direct provision for compulsory written contracts for employment within the territory, the choice lying open between unregulated labour and regulated labour In the case of unregulated labour engagements may be written or oral according to local custom Regulated labour under written contract is the usual form of employment for long-term labour Although in theory written contracts are not compulsory for the Tonking workers employed in Southern Indo-China, and although colonisation companies are entitled to employ uncontracted immigrant labour, in practice ever since 1927 all labour gangs formed in Tonking for undertakings in Cochin-China and Cambodia - have been under written contract

On the other hand for Indo-Chinese workers engaged for French undertakings in the Southern Pacific written contracts are strictly compulsory In *New Caledonia* written contracts are compulsory Natives belonging to the races of Oceania (Natives of New Caledonia, the Loyalty Islands, the New Hebrides and the Wallis Archipelago) are engaged under written contracts entered into before the head of the Native Affairs Department, while immigrants of Asiatic origin (Indo-Chinese, Javanese, etc) also work under written agreement entered into before the head of the Native Affairs Department or an immigration officer

In *Italian colonies* long-term contracts are unusual and there are few provisions concerning written contracts In *Eritrea* the Governor's Decree of 1 September 1916 provides for a written contract in the form of a work book for domestic servants and for workers engaged for not

less than one month in industrial and commercial undertakings, on public works, etc In *Italian Somaliland*, although model forms of contract have been laid down for agricultural workers employed by the Concessions, it is not clear whether a written contract between employer and worker is implied in all cases On the other hand, under the Governor's Decree of 31 July 1930, a written contract in the form of a workbook is required for the engagement of industrial workers Furthermore, the Governor's Decree of 22 February 1912 provides that contracts involving the employment of workers by the administration for periods in excess of a fortnight shall be drawn up by the Resident, signed by him, by the Cadi and by the interpreter and registered

In the *South Sea Islands under Japanese Mandate*, while contracts in general between Japanese or foreigners and Natives require the sanction of, and registration by a Government authority, an exception is made for employment contracts for a term of not more than one year It would thus appear that oral labour agreements are valid for periods of one year or less In practice, however the employment of Native labour is on a small scale and is limited to the Angaur phosphate mines which are worked by the Government

In the more important of the above territories, as regards contract labour, the obligation to enter into a written contract for employment within the territory is usually dependent on the duration of the contract The situation is different in the Netherlands Indies

Written contracts in the *Netherlands Indies* are compulsory (1) for employment outside the territory, either in Surinam or in a foreign country [1], (2) for penal sanction contracts for the engagement of Natives and Asiatic foreigners for agricultural or industrial undertakings in the Outer Provinces which are not classed as small undertakings by the Batavia Labour Office, such contracts being legal only for workers from other parts, i e Java or Madura, foreign territories (China) or an Outer Province other than that of employment, and (3) contracts without penal sanctions for Natives recruited in Java or Madura for employment in the Outer Provinces in commercial, agricultural or industrial undertakings of a large or medium size, on the construction or maintenance of railways or tramways or on public works

Thus, the obligation to enter into a written contract is not bound up with the question of the duration of the contract In certain cases, however there is undoubtedly an indirect connection between the two The law requires written contracts for foreign employment, but recently exceptions have been permitted for short-term engagements The obligation in the case of penal sanction workers appears to be linked with the question of duration, as such contracts are invariably of appreciable length which may extend to two years Lastly, the initial engagement of non-penal sanction workers recruited in Java or Madura for the Outer Provinces is usually fairly long, and once again the obligation to conclude the contract in writing may be explained by the length of engagement

---

[1] In virtue of an Ordinance of 8 December 1936 the Governor may grant exemptions from this obligation in the case of workers engaged for employment in a foreign territory This facility is based on the abolition of written contracts in certain British territories and their replacement by short-term oral agreements However, under the Ordinance of 18 January 1937 such workers are required before departure to receive a written statement of the chief conditions of employment

On the other hand, the written contract is not imposed in the case of local workers The obligation, where it exists, in all cases affects workers employed at considerable distances from their homes, either in the Netherlands Indies or abroad

In *Dutch Guiana* a written contract is required by law in the following instances (1) engagements effected abroad through the administration for employment in agricultural or industrial undertakings, on public works or in public utility services, the workers for years having been only recruited in Java, and the obligation being also imposed in virtue of the law of the Netherlands Indies, (2) engagements for what are known as the forestry industries, i e the collection or working of minerals, timber, balata and other forest products, the contract taking the form of a work-book, (3) engagements for more than six weeks of persons of Negro descent for employment on plantations

Except in the last case no direct relationship is established in the law between the length of engagement and the obligation to conclude a written contract In fact, however, the relationship exists in regard to Java workers who engage for five years under a model contract drawn up by the Governor-General of the Netherlands Indies On the other hand, it seems reasonable to assume that the written contracts for workers in forestry undertakings are required less by reason of the length of engagement than as a means of preventing such misconduct by either party as may easily occur in this type of employment

In the *Portuguese African colonies* contracts for employment within the colonies may be concluded with or without the co-operation of the authorities Contracts concluded with the co-operation of the authorities are in all cases required to be in writing Contracts concluded without their co-operation may be written or oral Contracts of the latter type, whether written or oral, may only be entered into when the worker's usual place of residence is in the area of the agency of the curator where the work is to be performed, or if the worker offers his services spontaneously without any recruiting operation, or in case of exceptional or urgent work, for a maximum engagement of three months If oral, it appears that such contracts are by the working day, by the week, or by the month All adult male Natives are provided with work-books in which space is provided for information regarding all contracts except contracts by the working day which are terminable from day to day

All contracts for employment outside any of the Portuguese African colonies are required to be in writing

§ 2 — Conclusions

In view of national experience it seems that any international text for the regulation of indigenous contracts of employment will necessarily take as its starting-point the obligation of the written contract The principal question that has to be examined would therefore seem to be that of the criteria which should be used to determine the cases when a written contract should be compulsory The summary of law and practice given above shows that in determining these cases emphasis has been placed in various

territories on (1) the duration of the contract, (2) the factor of foreign employment or sometimes of employment beyond the worker's home district, (3) the co-operation of the authorities in concluding the contract, (4) recruiting, (5) the forms of employment, (6) penal sanctions, and (7) exceptions from law or custom which may be less favourable to the worker

As a result of its examination of this question the Committee of Experts on Native Labour took the factor of duration as the chief criterion Not only is it to be found in the majority of colonial laws but also it indirectly covers most of the other factors Where a distinction is drawn between engagements concluded with or without the co-operation of the authorities, it is normally engagements for longer than a specified period which require such co-operation Recruiting is very frequently for engagements of some length The forms of employment for which written contracts are specified are forms which employ long-term labour Where written contracts are imposed in the case of penal sanction workers and not of other workers the engagement of the first class is usually of comparatively long duration The written contract for employment abroad or for employment outside the worker's home district figures in many laws in addition to the factor of duration In most cases, however, an engagement of this nature is a long-term engagement

On the question what should be the duration of the contracts requiring written verification, the Committee of Experts, in view of the diverse practice in colonial laws, naturally examined a suggestion that the precise period should be fixed by the competent national authorities and not in any international text The Committee did not, however, adopt this suggestion The emphasis laid by the Committee on the written contract as the basis of protective legislation appeared to make it essential that a precise period should be suggested The period suggested by the Committee was six months It was recognised that in many laws it is shorter, even one month being a frequent maximum for oral contracts It was pointed out, however, that a period so short, for example, as one month would be impracticable in territories where there was no Government officer within several days' journey from the place of employment, that in some areas the six-month requirement would mark an important advance in law and practice, and that if this period figured in any international decision territories having a shorter period of validity for oral agreements would be at full liberty to retain any such period

One other criterion was recommended by the Committee, having regard in particular to the situation in the Belgian Congo, where, as described in the preceding section, the employer must record in a document visaed by the competent authority any contract providing for specified exceptions to the conditions of employment fixed by law and custom, if he is to be able to prove the contract against the worker The Committee considered that, if such exception were permitted, it would be desirable to prescribe the guarantee of the written contract, no matter how short may be the period of service

Taking all these considerations into account, the Committee made the following recommendations

"*All contracts of employment should be required to be in-writing*

"(a) *When the contract is concluded for a maximum period to be fixed by the competent authorities but which should in no case exceed six months or such number of working days as may be fixed by the competent authorities as being equivalent to six months,*

"(b) *When the conditions of employment provided for in the contract involve material exceptions from the conditions customary in the district of employment for similar work,*

"(c) *In such other cases as may be specified by the law or regulations*"

The Committee also considered that a worker should not be prejudiced by wrongful failure of an employer to conclude a contract in writing, i e that the worker should not be deprived of his right to claim performance by the employer of his obligations by reason of the neglect of the employer to conclude a contract in writing It is not known to what extent such a danger exists in practice, and it is therefore suggested that the Governments should be consulted on the desirability of inserting a provision to guard against this contingency in the international regulations

CHAPTER III

CONTENTS OF THE CONTRACT

One of the principal features of the development of the indigenous contract of employment is its transformation from a document of a purely administrative kind, which scarcely mentioned anything but the worker's obligations to his employer, into a truly reciprocal agreement setting out the main rights and duties of both parties Most of the national legislations concerned now make detailed provision for the matters to be specified in the written contract, hence the significance for the protection of the worker of the contents of the contract An analysis of the laws and regulations reveals, however, a fairly considerable variety in this respect

§ 1 — Law and Practice

In the *Belgian Congo* the document drawn up by the employer and described in the law as " the written contract " need only contain such specifications as are agreed upon by the contracting parties in each case These specifications are (1) the identity of the parties (cases have been known in which the name of the worker was not given in the contract but on a list attached thereto, the list remaining with the employer, who could therefore alter it, the courts have ruled that this is out of order and that an essential element is missing in the contract if the name does not appear), (2) the nature of the work to be performed (the specification " worker " is insufficient for the purposes of the contract), (3) the rate and method of remuneration and any special provisions concerning housing and rations, (4) the place where the work is to be performed, the duration of employment and the place and date of engagement, (5) details required under Orders concerning health and safety (medical examinations, etc)

In the territories administered by *Great Britain and the Dominions* considerable verbal variety is to be found in the legal stipulations specifying the contents of written contracts The general tenor, however, is to require as a minimum an indication, in addition to information regarding the employer and the worker, of the place, nature and duration of employment, the rate of wages and the periods of payment Model forms of contract to be followed as nearly as possible are often prescribed

In the *Union of South Africa* and the *South African territories under British administration*, the Masters and Servants laws include a model

form of contract which shows the date of the contract the names and other particulars of the contracting parties, the nature of the employment, the date of commencement and termination of employment, the rate of wages, the manner of calculation, the periods of payment and any special conditions of the contract Many of the contracts actually in use are extremely detailed Those, for example, used by the Native Recruiting Corporation for the engagement of mine workers provide for the mention of a number of particulars in regard to the identity of the labourer, the number of shifts to be worked, the advances in cash, kind, food and rail fares, and deferred pay and specify the requirement in regard to medical examination, the periods of payment of wages, hours of work, minimum tasks and the labourer's duties in general On the back of the form is given a schedule of rates of pay according to the various classes of work

In the *Mandated Territory of South West Africa* the legislation contains a model form of contract providing for mention of the names of the parties, the nature of the employment, the date of commencement and termination of employment, the rate of wages and the periods of payment

In *Southern Rhodesia* no special form of contract is necessary, provided that the date of the contract is shown, as well as the duration of employment and the rate of wages The contracts which were formerly used by the now defunct Native Labour Bureau entered into great detail, giving, for example, for mine workers the conditions of transfer from underground work to surface work and *vice versa*, rates of pay, payments and medical treatment in the case of accidents, methods of wage payments, deductions, advances, provisions concerning free quarters, ration scales, the estates of deceased workers, the care and treatment of the sick, workmen's compensation, clothing, re-engagement, repatriation, etc

In *Northern Rhodesia* attested contracts must specify the nature, commencement and duration of employment, the place or limits within which the worker is to be employed, the remuneration to be paid and whether with or without food, and a stipulation by the employer to pay wages monthly or at shorter periods, unless otherwise expressly desired by the employed The attesting officer, moreover, is expressly authorised to insert conditions making adequate provision for the feeding of the worker from home to home, the payment of his railway fare, his transport by lorry and the fact that his re-engagement is subject to the approval of the authorities in the territory of employment Model contract forms are prescribed for home and foreign service

The International Labour Office has no record of any form of contract prescribed in *Nyasaland* The law provides that the employer shall keep a permanent record of employment containing the name of the worker, the date of engagement, the rate of pay, advances, deductions and other details connected with employment

In the *East African Dependencies* the contract is required to specify as accurately as may be the nature and duration of the service, the place or limits within which it is to be performed, the remuneration and a stipulation that wages shall be paid monthly or at shorter periods unless otherwise expressly desired by the worker Forms which have been prescribed mention other details The *Kenya* form, for example, provides for the mention of the place and date of the contract, the date of commencement and termination of employment, the place and nature of employment, the rate of wages, rations, blankets, housing, cooking pots and water utensils provided by the employer, the food or

money supplied for the journey and the mode of travelling to and from employment. Another example is the foreign form of contract used in the *Mandated Territory of Tanganyika*, this form in addition to containing particulars for each worker enumerates the employer's obligations and thus forms a kind of miniature labour code.

Special contracts in East Africa which should be mentioned are the clove-picking contracts in *Zanzibar* and the resident labourers' contracts in *Kenya*. The clove-picking contracts stipulate that wages must be paid at not longer than weekly intervals. The Kenya resident labourers' contracts contain, in addition to details about the farm occupier, the labourer and the period of contract, a statement of the labourer's rights as regards the cultivation of food crops, the number of days' labour to be furnished by the labourer and his family, the rates of payment for such labour, provisions in case of the termination of the contract and a condition for mission land and other places where schools are available that the Native shall cause his children to attend school regularly.

In the *West African Dependencies* the laws provide in the *Gold Coast*, *Nigeria* and *Sierra Leone* that home contracts shall not be attested unless they specify the nature of the service, the place or limits within which it is to be performed, the remuneration and, in Nigeria and Sierra Leone, the times when wages are payable. Forms prescribed in Nigeria and Sierra Leone allow for the addition of any special obligations of the employer with regard to rations, etc. The West African prescribed forms of foreign contracts are more detailed providing for mention of the names of the parties the nature of the service, the place and period of employment, the rate of wages and stipulations concerning rations, deferred pay, free quarters, medical attention and repatriation. Contracts concluded outside *Hong Kong* with a view to employment in the colony must clearly state the duration of employment, the rate of remuneration, the nature of the work to be performed, any advances to be deducted from wages and the employer's undertaking to provide the worker with regular employment at the agreed rate of pay.

In the *British Pacific Dependencies* where contract labour is employed, prescribed forms provide for the mention of such details as the nature, place and duration of employment, the rate of wages, the employer's obligations in regard to free transport, accommodation, rations clothing, care during incapacity and repatriation, as well as particulars of the employer, the recruiter, the worker and his family. The Similar provisions are made in the Australian Dependencies. form of contract prescribed in the *Mandated Territory of New Guinea*, for example, provides for the recording of full particulars of the worker his wife and children if accompanying him, his occupation, the place of employment, the period of service, the monthly rate of wages both current and deferred, the names of the interpreter of the contract, the worker's previous employer, the next of kin and the recruiter, the goods issued to the worker, the payments due for such goods and the payment due on the completion of the contract.

Contract forms have been prescribed in some of the *West Indian and American Dependencies*. One example will suffice. In *British Honduras* the prescribed form provides for mention of the date and place of signing of the contract, the capacity in which the worker is engaged, the date of commencement of employment, the period of engagement, the place of employment, whether transport is provided, the monthly rate of wages

and the advances The form summarises the duties of the worker and of the employer and details the minimum scale of rations

In the *Spanish Territories of the Gulf of Guinea* the model contract provides for details concerning the identity of the employer and of the worker, the nature and duration of employment, the rate of pay, advances, etc , and reiterates certain of the employer's obligations such as the supply of housing, rations and free repatriation

The analysis of local laws and regulations in the *French Dependencies* shows considerable differences as between one territory and another in regard to the contents of contracts

In *French West Africa* contracts are by law considered void unless they include (1) the full name, nationality, occupation and domicile of the employer and, if acting on behalf of a firm, the date of his appointment and extent of his authority, (2) the full name, age and sex of the worker, the names of his village and headman as recorded on the poll tax register, the name of the administrative district in which the village is situated, and a description by which the worker may be identified, (3) the exact nature of employment and the area in which it is to be performed, (4) a medical certificate of fitness whenever a medical officer is present at the place of engagement, (5) the duration of the contract, (6) the rate and method of remuneration, (7) a precise specification of rations, (8) conditions as to clothing and housing, if supplied, (9) a statement to the effect that the worker is free from any previous contract, (10) an undertaking on the part of the employer to facilitate the collection of the worker's taxes during the period of employment, (11) special clauses, if any

In the *Cameroons* and *Togoland under French Mandate*, the following points are required by law to be mentioned in the contract the name of the employer, the identity of the worker, the nature of employment, the duration of the contract, the rate and method of remuneration, the employer's undertaking to provide the worker with suitable accommodation, together with rations unless the contrary is stipulated under wages, to treat the worker well and to respect his customs, the absence of any previous engagement, the employer's duty to facilitate the collection of taxes, and special clauses, particularly as regards advances

In *French Equatorial Africa* the law provides that the list of clauses to be inserted in the contract shall be laid down in Orders issued by the Governor-General, and that these clauses " shall allow for the racial peculiarities of the workers, their habits and customs and the nature of the work to be performed "

In *Madagascar* the law requires the contract to mention the name of the employer, the identity of the worker, the place and nature of employment, the duration of the contract, the rate and method of remuneration, details as to rations, clothing and accommodation, advances on engagement, special clauses in regard to termination, and various other points

In *French Somaliland* the contents of the contract are defined by law as in Madagascar

In *Indo-China* the contract is required to specify (1) the full name of the employer, (2) the full name of the recruiter, (3) the date and place at which the contract was concluded, (4) the name, age, parentage and domicile of the worker, (5) the place of employment, duration of the contract and nature of the undertaking, (6) the number of hours

to be worked daily and any provisions for task work in lieu thereof, (7) the number of days' rest with or without pay, (8) the rate of remuneration and method of payment; (9) the worker's right to accommodation and medical attendance free of charge for himself and family, (10) his right to full or part rations and, where applicable, to clothing, (11) the amount of advances, if any, and conditions of repayment, (12) the obligation concerning free transport and repatriation for the worker and family, (13) the arrangements, if any, concerning deferred pay, (14) the fact that the contract has been read to the worker in his mother tongue before signature, (15) the number of the worker's identity card and the signature of the worker or his right thumb-print in lieu of signature, (16) the names and the numbers of the identity cards of any members of the worker's family recruited with him

The contract forms for Natives of Oceanic race engaged in *New Caledonia* contain space for the identity and description of the worker, the name and domicile of the employer, the nature and duration of employment, the employer's undertaking to provide accommodation, medical attendance, rations, quarterly pay, and clothing and to bear the cost of hospital treatment, burial and repatriation, the worker's undertaking to work extra days at the end of the employment for any days of absence and the normal daily hours of work In the case of Asiatic immigrants (Indo-Chinese, Javanese, etc), the law provides that the contract shall mention the name and capacity of the parties, their respective obligations, the nature, duration and place of employment, wages, overtime rates and any other conditions

In the *French Establishments in Oceania*, all immigrant contracts are void that do not mention (1) the duration of the engagement, (2) the right to repatriation, (3) the number of days to be worked per week, month or year, and the number of hours to be worked per day, (4) wages, clothing, rations, overtime rates and other special privileges, (5) the worker's right to free medical attention, (6) the right to burial at the expense of the employer, (7) the amount of the agreed bonus or the fact that the bonus has been waived, (8) the pay advanced by the employer In the case of workers other than those covered by the provisions for immigrants contracts are required to mention the name of the employer, the identity of the worker, the nature of employment, the place and duration of employment, the rate and method of remuneration and the daily hours of work, the number of days' rest, the rations and accommodation provided by the employer, the right to medical attendance, advances, the absence of any previous engagement, special clauses particularly as regards repatriation, and the fact that the contract has been read to the worker in French and in his own language

The diversity in the laws summarised above does not appear to correspond to any differences in local conditions While all provide that the contract shall mention the name of the employer and of the worker, the nature, duration and place of employment and the rate of pay, no legal provision is made for a medical certificate except in French West Africa, rations need not be specified in the Cameroons and Togoland, although required in French West Africa, the clause concerning the absence of any previous engagement does not appear either in Madagascar or in Indo-China, nor does the clause concerning the employer's duty to facilitate the collection of the workers' taxes Moreover, the determination of daily hours, the obligation to provide medical attendance, the list of days of rest and the provisions concerning

deferred pay are not to be found in the legislation of the African Colonies

In the *Italian Colonies* the laws and regulations contain the following provisions concerning the contents of contracts

In *Eritrea* the work-book to be delivered to a worker engaged for not less than one month by a commercial or industrial undertaking, etc , is required to mention (1) information necessary to identify the employer, (2) similar information in regard to the worker, (3) the date of commencement of employment, (4) the duration and nature of employment, (5) the agreed wages, and (6) the method of payment Further, during the course of employment a record is to be kept in the work-book of the number of days worked, the payments effected or foodstuffs supplied, the fines inflicted, days of absence, etc The domestic servants' work-book is required to contain roughly the same information

In *Somaliland* the work-book prescribed for industrial workers is required to mention (1) information necessary to identify the worker, (2) the name of the undertaking, (3) the date of commencement of employment, (4) the nature of employment, (5) the daily rate of wage, (6) the character of the worker, (7) the date of dismissal Contract forms for Native labourers employed in agricultural undertakings contain a detailed list of the rights and obligations of both parties

In the *Netherlands Indies* the Coolie Ordinance (1931-1936) provides that contracts subject to penal sanctions shall mention (1) information necessary to identify the worker, (2) the name of the employer and of the undertaking for which the worker is engaged, (3) the nature of employment, (4) the daily hours of work, (5) the amount and method of remuneration, (6) the amount of advances, (7) the duration of the contract, (8) rest days and religious festivals, (9) the date and the hour at which the worker is to join the undertaking

The Regulations of 1932 concerning the employment of Chinese labour under penal sanctions in the tin mines of Billiton contain exactly the same clauses they also provide that the contract shall mention the employer's obligation, where applicable, to supply the worker with rice and salt or with full rations or with clothing

In Banka, under the corresponding Regulations of 1927, the contract must mention not only the principal terms of agreement, but also certain obligations laid on the employer and the worker by law (e g repatriation, accommodation and free medical attendance)

In all these cases, clauses may be inserted other than those stipulated by law Failure, however, to comply with such clauses is not a penal offence and any unlawful stipulation is void

In accordance with the form drawn up by the head of the Batavia Labour Office, contracts without penal sanctions concluded with " free " workers recruited in Java and Madura for the Outer Provinces are required to mention such information as is necessary to identify the employer and the worker, the nature of employment, the amount and method of remuneration, the amount of advances, the maximum number of hours per day and the duration of the contract The form also repeats the legal provisions concerning repatriation, accommodation and medical treatment for the worker and his family

In the case of labour engaged for Dutch Guiana or foreign colonies, the contract forms drawn up by the Governor-General are compulsory They contain a detailed and exhaustive list of the rights and duties of both parties

A stipulation to the effect that the contract shall be drawn up both in Dutch and in the Native language is only to be found in the Ordinance of 1896 concerning the engagement of workers for Dutch Guiana In the case of workers recruited for New Caledonia, forms drawn up in Dutch, Malay and French are used

In *Dutch Guiana* the practice as regards the contents of the contract is as follows In the case of Javanese workers imported into the colony by the administration, a contract form has, as stated above, been drawn up by the Governor-General of the Netherlands Indies. For workers engaged locally for forestry undertakings mention is compulsory of (1) the name, occupation, race and domicile of the parties and the age and description of the worker, (2) the dates of commencement and termination of the contract, (3) the nature of employment, (4) as accurate an indication as possible of the place of employment, (5) the amount and method of calculating and paying wages, (6) the price of foodstuffs and other commodities which the employer is required to have available for the worker, or, if free rations are supplied, the amounts stipulated, (7) the amount of advances, (8) the total amount owed by the worker to the employer at the commencement of the contract, (9) a clause to the effect that any dispute between the employer and the worker with regard to the quality of the product shall, in the case of balata, be settled by a committee set up for this purpose The work-book includes a photograph of the worker

There are no legal stipulations as to the contents of the written contracts concluded with workers of Negro descent engaging for periods in excess of six weeks on plantations

In the *Portuguese colonies* the Native Labour Code provides that contracts of employment shall in all cases mention the following points. (1) the duration of the contract, (2) the nature of the work to be performed, (3) the place of employment, (4) the rate of wages and the rations and clothing supplied, and (5) advances, if any The contract may also include other clauses, provided they are not contrary to the Code, and local regulations may require the inclusion of additional clauses In cases where the worker is accompanied by members of his family, the latter are included in the same contract and covered by all the stipulations applying to the head of the family except those dealing with wages

Contracts drawn up under the *modus vivendi* concluded by the Colony of *S Tome and Principe*, with *Angola*, *Mozambique* and the *Cape Verde Islands* respectively must explicitly mention the right of the worker to compensation in the event of an accident involving amputation, temporary or permanent incapacity for work, or death

§ 2 — Conclusions

In spite of the diversity of the laws analysed above, certain main features of the legal provisions concerning the contents of the contract stand out Nearly all the laws provide that certain details, regarded as essential for the determination of the worker's rights and obligations, are to be mentioned in the text of the contract These details are the following (1) information necessary

to identify the worker and the employer, (2) the length of the contract, (3) the place and nature of the employment, and (4) the worker's wages and the periodicity and method of payment The other clauses differ considerably with the various territories and local laws The following points, however, appear in the contracts of one territory or another rations, clothing, housing, compensation for accidents, rest days and public holidays, overtime, deferred pay, night work, free transport for workers, leave, family assistance in the event of death, the absence of any previous engagement on the part of the worker, the payment of the worker's taxes, observance of tribal customs, extra time to be worked for absence, medical certification of fitness, sanctions, provisions concerning the worker's family, etc

The differences in the legislative requirements concerning the contents of the contract are no doubt due in some cases to local contingencies, in other cases, however, they appear to be due to the fact that it has not been felt necessary to amend old laws, which may have been outstripped in practice Thus in some territories where the law only stipulates that the contract must mention details such as those necessary for purposes of identification, the duration, place and nature of the employment and the amount of wages, the forms of contract actually used by the employer provide for much more detailed information

Another conclusion to be drawn from the above summary is that, when a worker is to be employed outside his own territory, the law usually stipulates much more comprehensive contracts

Finally, it may be noted that in some cases where written contracts are not made compulsory by law, for instance in the Belgian Congo, the essential rights and duties of the parties are recorded in the work-book

The main problem concerning the contents of the contract, from the point of view of the proposed international regulations, is whether the practice of inserting in the text of the contract itself all the details necessary to establish clearly the rights and obligations of the parties should be recommended to administrations, or whether it would be preferable to require the insertion only of the particular conditions of each contract (i e information necessary to identify the parties, the duration, place and nature of employment, and the worker's wages), leaving the general obligations of the parties to be specified in the laws alone Both these courses are attended by advantages and disadvantages

At first sight, the first course would appear to afford the most

effective protection for the worker He can hardly be expected to be well informed of the labour legislation in the colony where he is employed Moreover, the contents of the contract are not always regulated in detail by the laws and regulations, and both parties are usually allowed to insert certain additional clauses by agreement The best means of ensuring that the worker is informed of his rights and obligations, without any possibility of misunderstanding, would apparently be to make compulsory the insertion in the contract of all the obligations of both parties The objection that under this system the particular clauses of each contract might be obscured may be met by pointing out that, as a rule, the law provides for the presence of a representative of the administration when the contract is signed, in order to ensure that the Native fully understands its terms, and that it is obviously a part of his duty to draw the attention of the worker to such points as the duration of the employment, the nature of the work to be performed and the amount of wages

The arguments in support of the second system are no less convincing Where the law deals clearly with all contingencies and where an efficient administration is backed up by an adequate inspection service, it does not seem essential that the contract should contain any stipulations other than those which are peculiar to each case An efficient administration and an adequate inspection service provide the best security for the proper application of labour legislation Where such security is lacking, the fact that the contract contains a more or less exhaustive list of stipulations will not help much Moreover, if every legal provision that is generally applicable is to be inserted, the contract may become unduly long In view of the workers involved, this point ought not to be overlooked

Having to choose between these two systems, the Committee of Experts on Native Labour expressed a decided preference for the latter, which restricts the contents of the contract In the opinion of the Committee it would be sufficient if written contracts were to contain all particulars that may be necessary, in conjunction with the relevant provisions of the laws and regulations, to define the rights and obligations of the parties These points are, in the first place the employer's name, the place of employment, the worker's name, his place of origin and such other particulars as are necessary for his identification, the nature of the employment, the duration of the employment and how calculated, the rates of wages and how calculated and the manner and

periods of payment The Committee further added the following points as also of essential importance the advances of wages (if any) and the manner of repayment, repatriation and any other special conditions of the contract

Nevertheless, if the general rights of the contracting parties are to be treated in the texts of the law alone and not in the contract, an essential presumption is that the worker has the means to become effectively acquainted with the provisions of the law Accordingly, when expressing its preference for the shorter form of contract, the Committee thought it necessary to recommend that " whenever possible, concise summaries of these laws and regulations should be printed in the official languages of the territories concerned and in a language known to the workers, and issued to employers and workers "

The Conference may think it desirable to consult Governments as to the expediency of embodying this principle in a Recommendation

CHAPTER IV

ADMINISTRATIVE SUPERVISION OF THE CONCLUSION OF CONTRACTS

With workers who for the most part are illiterate and who in many cases are ignorant of any language except the vernacular, with labour regulations which may be of great detail and with contracts involving extensive obligations for the worker as well as the employer, it has been considered necessary in practically all territories in which indigenous labour is employed to provide for close administrative supervision This supervision serves at the same time to guarantee the protection of the worker when concluding a contract, to provide the administration with adequate means of control, and to give the employer a reasonable assurance that the agreement has been understood and accepted by the worker

It has therefore been found to be to the advantage of the three interests concerned that, before or at the time of coming into effect of any labour agreement necessitating a written contract, a representative of the administration should certify that the agreement fulfils the requirements of the law and has been accepted by both parties with full knowledge of its implications Such Government intervention not only provides an essential measure of control at the time of commencement of the contract, but also, by furnishing an occasion to record the contract, provides for the contingency that the administration, the employer or the worker may require proof of the existence and terms of the contract

§ 1 — Law and Practice

The Endorsement of the Contract

The checking of the labour agreement by the competent Government authority is variously described in the laws of the

countries concerned as the " attestation " or " visa " of the contract In both cases the essential feature of the procedure is that the Government officer by endorsing the contract indicates that he has taken the steps required by the law or the instructions of his Government to verify the regularity of the agreement between employer and worker

The Grey Report on Recruiting discussed the practical value of such action in the following terms

" Witnesses of actual administrative supervision of this kind have sometimes commented on the summary nature of the proceedings But while it no doubt happens that a busy administrative officer may regard his attesting duties as routine work to be finished as quickly as possible, the administrative supervision of recruiting cannot be dismissed as mere legal mummery The officer generally knows which recruiter he may trust and which requires careful supervision The recruits may be proceeding to an employment with which they are already familiar and therefore need only the briefest reminder of its conditions An opportunity is in any case given of checking gross abuses and keeping before the recruiter a sense of his obligations The conditions under which the workers are recruited can be established beyond possibility of dispute, and any conditions not normal to the district will be bound to receive the scrutiny of the public officer " [1]

The same considerations hold good whether the engagement is concluded with or without the intermediary of the recruiter

The provisions relating to administrative supervision contained in the national laws and regulations are summarised below

In the *Belgian Congo* the employer who has occasion to prove that labour obligations have been accepted by a worker in the shape of a contract for more than six months, or any other agreement necessitating a written record, can only do so by submitting a document showing that the worker's consent was given at the time he entered the contract and that the competent authority had visaed the record The visa may not be granted before the obligations assumed by the worker have been explained to him and freely accepted by him Before giving his visa the Government officer is required to satisfy himself that the contract is in due legal form and that the worker has full knowledge of the terms of employment

In the territories administered by *Great Britain and the Dominions* it is usually provided that contracts required to be in writing must be entered into by worker and employer or recruiter in the presence of a Government officer In certain instances the law only requires this procedure in cases where the worker is illiterate, in practice however no distinction of this nature appears to be made An exception to the general rule may be found in the *New Hebrides* Here the contract may be entered into before witnesses instead of before a Government officer, but it remains provisional until approved by the competent authority

---

[1] Report IV, International Labour Conference, Nineteenth Session, 1935 *The Recruiting of Labour in Colonies*, etc , p 178

The chief duties of the attesting officer are to satisfy himself that the law has not been infringed and that the conditions of the contract are understood and freely accepted by the worker These obligations are prescribed in varying language, but are to the same general effect In many cases, moreover, the officer is specifically granted a discretionary power to refuse to attest a contract if conditions of employment appear unsatisfactory

It seems unnecessary to describe in detail all the laws relating to this subject, their character may be illustrated by a summary of the position in the principal territories of contract employment and the cases where there are departures of more than verbal significance from the main principles

In the *Union of South Africa* the contracts of workers recruited by labour agents under the Native Labour Regulation Act are required to be attested by a magistrate or a person approved by the Minister, and cases coming before the courts have established that no recruited Native can be convicted of failing to enter upon employment unless the contract is attested The attestation may only be made if the officer is satisfied that the terms and conditions of the contract are fully understood by the Native concerned and are not in contravention of the provisions of the Act Written contracts are similarly attested under the Masters and Servants laws, which lay down that the officer shall satisfy himself by enquiry of the servant that the contract was entered into by the parties voluntarily and with a clear understanding of its meaning and effect The optional attestation or contracts under the Native Contract Service Act is accompanied by similar safeguards, the Act providing that the attesting officer shall satisfy himself by an interview with the worker that the terms of the contract have been accepted

Regulations under the Native Labour Regulation Act detail the duties of the attesting officer as follows he is required to cause the contract to be read aloud interpreted and fully explained to the Native concerned in his presence and in that of the employer or labour agent, no contract may be attested unless consented to by the Native labourer nor unless he is apparently over the age of eighteen years, nor if the Act has been in any other respect contravened

Similar provisions are to be found elsewhere in Southern Africa In *Swaziland* it is provided in addition that an officer in his discretion may refuse to attest any contract and that he shall not attest a contract which contains conditions permitting a reduction in the rate or rates of pay shown on the contract sheet

In *Northern Rhodesia* no written contract may be enforced against any servant who is unable to read and understand writing unless it is attested by a Government officer to the effect that it has been read over and explained to the servant in the presence of the officer, and that the servant entered into it voluntarily and with a full understanding of its meaning Contract forms, made compulsory by regulation, provide for the attestation of all written contracts The regulations authorise Government officers to refuse to approve contracts if the wages are considered inadequate or if in other respects the terms of the contract are inequitable

Discretionary powers to refuse to attest contracts are also reserved to the attesting officers in *Nyasaland*

In the *East African dependencies* no written contract may be enforced against a worker unless it bears an attestation similar to that prescribed

in Northern Rhodesia In the *Mandated Territory of Tanganyika* and *Zanzibar* the attesting officer is specifically required to inform the worker of his liability to criminal prosecution for any breach of the contract

In the *West African dependencies* the obligation to attest such contracts as are required to be in writing and the duties of the attesting officers are to the same general effect as in the East African dependencies

In the *Pacific* areas of Native employment provision is made in varying terms for the attestation of written contracts in the presence of the parties by Government officers, who are entitled to refuse to sanction a contract if they deem fit The duties of attesting officers are set out in particular detail in *Papua* An officer may refuse to sanction any engagement, he may not sanction an engagement until he has satisfied himself that fair remuneration is offered and will be fully paid, that the Native is willing to enter into the contract, that there is no reason to suspect that he will be unfairly treated, or that he will not be repatriated at the expiration of the contract, the officer may require a guarantee to be furnished by the employer

As mentioned above, the law for British subjects in the *New Hebrides* forms an exception to the general rule that the attesting officer must personally interview the intending worker It is there provided that a contract shall be witnessed by two non-Native persons and forwarded for approval to the Resident Commissioner Contracts are provisional until approved and the Resident Commissioner may disallow any contract for any reason he thinks good, and is required to disallow any contract if the Native did not freely consent to the engagement or clearly understand and accept its terms, as well as in case of physical unfitness

In the *British West Indian and American dependencies* contracts, which are required to be in writing, are as a rule attested by a Government officer The infrequency of written contracts, however, makes it unnecessary to detail the legal provisions defining this obligation

In *French dependencies* the part played by the authorities in the conclusion of the contract varies As elsewhere, the chief purpose is to see that the contract is freely accepted by the worker In certain territories, however, the requirement of Government intervention has been interpreted and utilised as authorising the administration to bring pressure to bear upon the Natives to accept employment with European undertakings

In *French Equatorial Africa* the Native workers, who are still in a very backward state, are deemed to be so exposed to the various dangers which may result from recruiting and wage-earning employment that the administration takes upon itself to negotiate their conditions of employment The principal Decree of 4 May 1922 lays down that the administrative authority is a party to all labour contracts as guardian of the Natives, that it shall ascertain whether the worker is entering the contract of his own free will and that it will draw up the contract All contracts which are required to be in writing are signed by the administrative officer in charge of the subdivision

These provisions have given rise to the question whether they are an effective means of protecting the freedom of the workers, or whether they do not make possible a form of pressure on the Natives to accept employment There is evidence that, until the labour shortage made necessary a strict policy of Native protection, forestry undertakings considered themselves more or less entitled to count on Government

support in obtaining labour In any case, the administration found it necessary, in 1926, to inform new undertakings that in future they would begin operations at their own risk, and that they might not find the necessary labour at hand, all future licences to begin operations were to bear the mention " Without any guarantee as to labour "

In the *Cameroons under French Mandate*, the contract may, on the request of either party, be submitted to the visa of the administration The visa is granted by the administrative officer of the subdivision of engagement or of employment, before granting it, he is required to have the contract read aloud and translated to the Natives

By the terms of the Decree of 9 July 1925 the Government officer's function is strictly limited to supervision However, in a Circular of 4 November 1925, it is explained that the principle of limiting the intervention of the administrative authority to supervision should not be interpreted as meaning that he should practise complete abstention The same Circular also laid down the moral obligation of the Natives to work, and concluded that " in the light of these directions the officers will be able to find the appropriate means of giving general satisfaction within the framework of the texts " A recent Circular of 1 May 1936 refers " to the difficulties experienced by some of the territory's undertakings in recruiting the necessary labour ", and shows how they may be helped in recruiting operations by the application of measures directed against vagrancy For this purpose, the Circular laid down the rule that no Native should be allowed to leave his home area without the express permission of the administrative authority or, " which comes to the same thing, unless he is in possession of a labour contract "

In *French West Africa* the visa of the contract is optional, except when it is required by the administration in the case of workers employed by itself A Decree of 22 September 1936 also requires the visa for collective contracts Before granting his visa the Government officer is instructed to verify the identity of the worker and his voluntary acceptance of the contract, the contract must be read aloud and, whenever possible, translated to the parties

In *Togoland under French Mandate* written contracts are submitted for visa to a Government officer who causes them to be read and translated to the contracting parties

In *Madagascar* the labour offices, or the local administrative officers in districts where there is no labour office, visa all contracts which are required to be in writing as well as any other contracts submitted for this purpose by either party The formality is regarded as particularly important owing to the number of fictitious contracts entered into by Natives, sometimes with the connivance of employers, in an attempt to escape obligations under the *fokonolona* system (labour dues and compulsory services) On several occasions the administration has tried to tighten up the procedure, a Circular of 15 February 1928, for example, reminded provincial commissioners of the legal obligations incumbent on employers to produce contracts and registers of Natives employed for visa [1]

According to section 36 of the Decree of 22 September 1925, the head of the district or the secretary of the regional labour office, before attesting the contract, " shall ascertain that the person engaged gives his free consent " On the other hand, in Madagascar, the administration

[1] See also Circulars of 20 April 1928 and 8 December 1936

intervenes in recruiting, and it is known that private undertakings consider it the duty of the administration to help them in obtaining labour, and that the administration has consistently intervened in this sense [1]

In *French Somaliland* the administrative supervision of the conclusion of contracts is on the same lines as in Madagascar

In *Indo-China* administrative supervision begins at the time of engagement, the worker is engaged by the employer or his representative before a Government officier, who is required to satisfy himself that the worker is perfectly acquainted with the terms of the contract Supervision is also exercised at the ports of embarkation by the administrator-residents, acting in collaboration with the identity services, at the important port of Haiphong a special office has been established for the supervision of labour emigration It is at the ports of embarkation that the contracts are signed in the presence of a representative of the labour inspectorate

In *New Caledonia* and the French *Oceanic* territories the administrative supervision of immigrant workers takes the form of a preliminary examination on the arrival of the ship, the assignment of the workers to the various employers, their registration, the issue of identity cards and work-books and the conclusion of the contract in the presence of a Government officer, who is usually a member of the immigration department

As in some of the British and Australian dependencies in the Pacific, in French Pacific territories the Government is empowered to decline to assent to contracts with certain employers By a special veto the Governor may order that no contract of engagement or re-engagement may be concluded with any employer who in the previous two years has been convicted of ill-treating his workers, or of serious breach of his contractual obligations [2]

In the case of non-immigrant workers, contracts are required to be attested by a Government officer who certifies that they have been read in French and in the worker's language

In the *Italian colonies* provision is made for the administrative supervision of the conclusion of some forms of contract In *Eritrea*, in the case of workers for whom work-books are prescribed, the Decree of 1 September 1916 requires the employer, at the time of engagement, to enter certain details of the contract in the work-book in the presence of the Government officer Subject to certain exceptions, the Land Regulations provide, in section 31, that the contracts of Native workers engaged for service in agricultural concessions must be concluded in the presence of the local authorities and subject to their approval In *Italian Somaliland* industrial workers are engaged at labour offices, where work-books are issued The situation regarding labour for agricultural concessions is as in Eritrea

In the *South Sea Islands under Japanese mandate* any labour agreement which might be required to be in writing would be subject to the sanction and registration of a Government authority

In the *Netherlands Indies* all contracts which are required to be in writing are entered into in the presence of an officer of the labour

---

[1] Cf Marcel Olivier *Six ans de politique sociale a Madagascar*, pp 91-95

[2] Similar provisions are in force in French West Africa and in the Cameroon and Togoland under French Mandate

inspectorate, or of an administrative officer appointed for such duties The officer is instructed to verify that the contract is in harmony with the law and that the prescribed formalities have been fulfilled He explains the meaning and effect of the contract and satisfies himself that the worker accepts the conditions offered He refuses his sanction if he suspects coercion, error or deceit

Particularly detailed instructions cover workers recruited in Java and Madura for the Outer Provinces or foreign territories At the port of embarkation the examining officer first explains the principal clauses of the contract to the workers in the absence of any person connected with the recruiting organisation He is required to record that he has fulfilled this formality Except when the head of the labour inspectorate authorises a shorter period, there is then an interval of at least 24 hours before the workers may accept their contracts At the expiry of this interval the workers are again brought before the Government officer who this time explains the contents of the contract in full On both occasions the explanations are given in the languages of the workers Apart from questions of coercion error or deceit, the officer is instructed to refuse to approve the contract when the identity of the worker, or of members of his family accompanying him, has been called in question and not confirmed within a time limit determined by the officer, and also in the case of the recruiting of a married woman if the consent of the husband is not established All contracts which are required to be in writing are signed by the officer who approves them

Workers recruited for employment abroad under short engagements which do not require a written contract are brought before a Government officer who explains the oral agreement to them

The contracts of Javanese workers who emigrate to *Dutch Guiana* must be approved under the law of the Netherlands Indies which has just been mentioned In Dutch Guiana itself the contract may be modified by mutual consent of worker and employer, in which case the modification is concluded in the presence of the competent officer whose duty is to see that the modifications, which may only affect labour conditions and wages, are not to the prejudice of the worker

Workers engaged in the colony for the forestry undertakings conclude their contracts before an administrative or police officer, who explains the meaning and the effect of the work-book issued to them Persons of Negro descent engaged by plantations for six weeks or more are signed on in writing in the presence of the district commissioner or of a notary

In the *Portuguese African colonies* the curators and their agents are alone entitled to co-operate in the conclusion of contracts According to the Native Labour Code all contracts concluded with the co-operation of the authorities are drawn up in the presence of the curator or his agent and countersigned by him after he has ascertained that the contracting parties mutually and without any coercion accede to each and all of the clauses of the contract and that none of the clauses is contrary to the provisions of the Code In the case of other contracts the right to compel the worker to carry out his obligations may not be enforced by an employer unless the contract has been ratified by the competent authority Such ratification takes the form of a communication to the curator of the contract, if it is in writing, or of a declaration summarising the contract, if it is oral

Registration of the Contract

The registration of the contract, as this term is used in the present Report, means the retention by the Government authority of a copy, or the recording in a special register or other convenient form, of all contracts submitted to attestation. This is a simple and natural complement to the act of administrative approval and is to be found in one form or another in all the territories under consideration.

In the *Belgian Congo* the originals of all contracts which have been submitted for visa are retained by the authorities. In addition employers are required to provide their workers with work-books containing the worker's name, village and district, the nature, date and place of employment, the rate of wages and periodicity of fragment, and, if it is fixed in the agreement, the length of the contract.

In the territories administered by *Great Britain and the Dominions* the law usually provides that the Government officer attesting a written contract shall retain a copy for registration and record. This obligation is so general that an enumeration of its detailed form in the various territories is unnecessary. Cases, however, may be cited where there is a double check by the competent authorities. In the *Union of South Africa* contracts of recruited workers are registered by the attesting officer and one of the copies is forwarded to a Government officer in the district of employment. In the *British Solomon Islands* copies of the contract are kept by the attesting officer and by the Labour Department. In the *West African dependencies*, foreign contracts are registered by the local officers and copies communicated to the Government of the area of employment.

As regards contracts which are not required to be in writing, it may be mentioned that in the *Mandated Territory of Tanganyika*, in the case of 30-day contracts, the employer is required to provide the worker with a labour card containing particulars of employer and worker, of the nature of the employment, of the date of the contract, of the number of working days, of the daily rate of wages, together with space for recording each day's work performed.

In *French dependencies* written contracts are either entered in a Government register or recorded by the retention of a copy of the contract by the Government authority. In *French Equatorial Africa*, *Togoland under French Mandate*, *Madagascar* and *French Somaliland*, the law expressly provides that each contract shall be recorded in a special register for each administrative district. In *Indo-China*, *New Caledonia* and the French *Oceanic* territories, registration takes the form of the recording of immigrants in a special immigration register. In *French West Africa* and the *Cameroons under French Mandate*, a copy of each contract is retained by the Government authority. In addition, in the French dependencies the work-book system is generally applied.

In *Italian colonies* the Somaliland Decree of 22 February 1912 concerning the employment of workers by the administration for periods exceeding a fortnight, provides for the registration of the contract. The same practice would apparently result from the administrative

supervision of those contracts which are entered into before the authorities

In the *Netherlands Indies* the competent officer enters in a register all contracts which he has approved, and records that he has supplied a memorandum of information to all workers engaged orally for short periods for employment abroad In *Dutch Guiana* a copy of the work-book is retained by the competent officer

Under the Portuguese Native Labour Code for the *Portuguese African colonies* contracts concluded with the co-operation of the authorities and written contracts concluded without their co-operation are filed at the office where the contract is drawn up, and if employment is in another district a summary is sent to the agency in the administrative area of employment

Copies of the Contract

Closely allied to the question of the registration of the contract is that of the copies delivered to employer and worker, or other means by which the parties can have at hand convenient information as to the terms of the engagement The question merits separate consideration for two reasons In the first place the supplying of a copy or of a record of the contract to the worker is not so universal as the recording of the contract by the authorities Secondly, such procedure stresses the individual character of the contract which appears to be a necessary corollary of freedom of contract.

In the *Belgian Congo* the employer may submit for visa copies of or extracts from the contract The worker is not entitled to receive a copy, every worker, however, must be supplied with a work-book, which contains particulars of the contract

In the territories administered by *Great Britain and the Dominions* it is a common practice to use the same contract form for a body of workers who may number from half a dozen to over 60 There are, however, cases in which a copy is required to be handed to the worker, while in other cases the copy is delivered to his representative or the contract is otherwise recorded on the worker's papers

In the *Union of South Africa*, of the three copies of attested contracts for recruited labour, one is retained by the attesting officer, one handed to the labour agent and the third to the conductor or person in charge of the worker, for surrender to the officer in the district of employment The Native Service Contract Act provides that the parties to a contract may record it in duplicate and obtain its attestation, while particulars of the contract may be endorsed on the Native's document of identification

In *Southern Rhodesia* one copy of the contract is retained by the attesting officer and the other handed to the labour agent or employer An endorsement is made of the existence and nature of the contract on the Native's registration certificate

In *Northern Rhodesia*, where the contract is attested in three copies,

one copy is delivered to the employer and one to the servant or, in the case of a gang, to the headman of the gang

Similar provisions are to be found in *Kenya*, the *Mandated Territory of Tanganyika*, and *Uganda* In *Nyasaland* the situation is the same, except that the law speaks of the worker's copy being delivered to him or his representative In *British Somaliland*, where contracts are also executed in triplicate, the law states that a copy shall be delivered to the employed

For contracts within the territories in *Nigeria* and *Sierra Leone* provision is made for their execution in triplicate, copies being delivered to the employer and worker, in addition to the copy retained by the Government officer In the *Gold Coast* any party who so desires may submit a copy of the contract for attestation by the proper authorities

In *Hong Kong* a copy of the attested contract is delivered to the worker

In the *Australian* and *British dependencies* in the *Pacific* provision is usually made for the delivery to the employer or recruiter of a duplicate of the contract registered with the attesting officer In the *British Solomon Islands* contracts are executed in triplicate, the third copy being entrusted to the labour department Probably owing to the primitive character of the labour force, the laws in these areas make no provision for the delivery of copies to the workers

In most of the *French dependencies* it is provided that the contract shall be drawn up in three copies, of which one is remitted to the employer and one to the worker In addition the employer is required to supply the workers with a work-book containing the successive dates of entering and leaving employment and any medical examinations which have been conducted In certain colonies the work-book not only is a method of identification and control but also serves as an indirect means of preventing vagrancy and intermittent employment

In *Italian colonies* work-books or labour cards are prescribed in *Eritrea* for domestic servants and for workers engaged for a month or more in commercial and industrial undertakings, and in *Somaliland* for industrial workers In addition, in Somaliland, a Decree of 10 May 1929 provides that agricultural contracts for employment on concessions shall be drawn up in two copies to be held by the concessionnaire and the worker

In the *Netherlands Indies* the contracts usually cover a number of workers, and it is neither compulsory nor customary to supply a copy of the contract to all workers Labourers emigrating to Dutch Guiana form an exception, the law requiring separate contracts In the case of workers recruited in Java and Madura for the Outer Provinces or for employment abroad contracts are in two copies, one of which is retained by the Government officer and the other retained by the recruiter for transmission to the employer Contracts under penal sanctions concluded in the Outer Provinces are also in two copies

In *Dutch Guiana* workers in forestry undertakings are supplied with work-books

In the *Portuguese African colonies*, under the Native Labour Code all male Natives are supplied with work-books which as regards employment contain particulars of the name of the employer and the place of employment, the date and period of validity of the contract, remuneration, etc As regards the actual contracts, those concluded with the

co-operation of the authorities are drawn up in duplicate Contracts drawn up in writing without the co-operation of the authorities, which may be individual or collective, are drawn up in duplicate if the workers belong to the district of employment, and in triplicate where they come from areas other than that of employment, a third copy being forwarded to the competent authority in the area to which the worker belongs

§ 2 — Conclusions

The above summary of the law and practice in the various territories shows that provision has been widely made for close administrative supervision at the time of conclusion of contracts and for recording them The need for such provisions is obvious, and it is not too much to say that the whole sincerity of a system of contracts which presupposes effective freedom of choice on the part of the worker depends on the conscientiousness with which the function of initial control is fulfilled by the Government officers It is therefore suggested that the Conference should instruct the Office to consult the Governments on the form of administrative supervision which should govern the conclusion of any contract required to be in writing

On this subject the Recruiting of Indigenous Workers Convention, which was adopted by the Conference in 1936, contains the following provision in Article 16 (1)

" Recruited workers shall be brought before a public officer, who shall satisfy himself that the law and regulations concerning recruiting have been observed and, in particular, that the workers have not been subjected to illegal pressure or recruited by misrepresentation or mistake "

In any international regulations dealing with the contracts of employment of indigenous workers it would seem desirable to provide, in the first place, that administrative supervision should be directed to ascertaining that the worker is entering on the contract as a free agent This principle is not always emphasised in the national laws and regulations, which in some cases, as the foregoing summary shows, have been associated with practices of intervention by the authorities which have sometimes amounted to pressure on Natives to conclude contracts of employment It cannot, however, be brought into question, in view of the provisions of the Forced Labour and Recruiting of Indigenous Workers Conventions, that the principle of freedom of contract must be the very basis of any international regulation of contracts

The national laws and regulations provide one example of

particular care on the part of the legislator and the administration to ensure that the worker is a freely consenting party and fully understands the obligations he is undertaking This example is the regulations governing the administrative supervision of the conclusion of contracts by workers in Java and Madura for employment in other parts of the Netherlands Indies or in foreign territories The special feature of these regulations is the requirement that recruited workers should be brought before a public officer, and the contract explained to them, in the absence of any representative of the recruiting organisation, and that the workers should then be given a period of at least twenty-four hours in which to make up their minds whether or no to accept the contract, after this delay they are then brought again before the public officer and the terms of the contract are explained to them in their own language

It may not be considered desirable or possible to attempt to generalise this procedure It would, however, appear to be essential to lay down as a minimum requirement that the public officer before whom the contract is concluded should be bound to ascertain personally, before approving the contract, that the worker has given his consent thereto freely and not under coercion or undue influence or as a result of misunderstanding The Office will therefore lay this question before the Conference in the draft list of points for the consultation of Governments

There are a number of other points on which, in the view of the Committee of Experts on Native Labour, the attesting officer should have to satisfy himself before approving the contract Most of these are found explicitly or implicitly in national laws or regulations

The attesting officer is required to ascertain that in form and substance the contract is legal and that its terms and nature are understood by the worker The Committee of Experts also considered that the officer should ascertain that the worker declares himself not bound by any previous contract, this point has its importance for the administration and for employers, as in some cases systematic fraud has been practised by the acceptance of advances and travelling expenses under more than one contract of employment It is also important for the ordinary indigenous worker that the dishonesty of a few individuals should be checked at source rather than allowed to develop into a reason for the retention of exceptional forms of criminal procedure applicable to the whole body of contract workers

Another point suggested by the Committee of Experts was that the attesting officer should ascertain that the worker has been medically examined The question of compulsory medical examination for workers employed under written contracts is deferred for later examination as it appears to be a question of substance distinct in principle from the act of attestation Leaving aside the question whether medical examination should or should not be imposed by any future international regulations, it would appear to be necessary to specify in connection with attestation that the officer should ascertain that the provisions of any law or regulation relating to medical examination have been observed

It may have been noted that in not a few instances the laws expressly permit or instruct the attesting officer to refuse to approve any contract which, although in due form of law and apparently freely accepted by the worker, is contrary to the worker's interests There is no doubt that such a provision is valuable among primitive peoples It was not, however, included in the principles drafted by the Committee of Experts, and it might be difficult to generalise it as, in some territories, it may be contrary to the conception of the duties of an attesting officer to grant him such wide powers of discretion For this reason no specific mention of the right of an attesting officer to refuse to approve a contract is made in the points laid before the Conference

As regards the registration of the contract, little need be said Interpreted as the recording of the fact of attestation it would seem to be a natural corollary of any such attestation

The question of supplying a copy of the contract to the worker requires more consideration It was shown above in the summary of law and practice that, in many of the chief territories of contract employment, it is customary to include a number of workers in the same form of contract Any change of this system which would require a separate original document to be drawn for each worker might be administratively inconvenient On the other hand, whether there be a separate document for each worker contracted or a document covering a number of workers, there is in reality a separate contract made with each individual worker, and each worker should be provided with a record of his contract as a means of knowing both his own obligations and those of his employer The Committee of Experts, therefore, recommended that a copy of the contract " or an equivalent document " should be delivered to the worker The Committee further marked its preference for the equivalent document in these words " Whenever

possible and in all appropriate cases this document should take the form of a work-book in which should be entered particulars of the worker, the employer, and the essential conditions of the employment, together with any other particulars that may be provided for by the competent authorities "

Such a system should take due account both of administrative convenience and the interests of the workers, and the Office will propose the consultation of Governments on this suggestion of the Committee of Experts

CHAPTER V

MEDICAL EXAMINATION

A feature of the regulation of the conditions of employment of indigenous workers is the importance attached to the medical examination of newly-engaged workers This examination is the more necessary because of the scarcity of general medical facilities among Native populations, the low health standards of the people, the radical changes which often accompany wage-earning employment, and the comparative lack of immunisation to the particular diseases to which the workers may be exposed

The Recruiting of Indigenous Workers Convention provides, in Article 18, for the medical examination of every recruited worker and for the action to be taken by the public officers charged with verifying the validity of the recruiting operations in regard to the requirement of medical examination In many cases, the provisions of the Recruiting Convention would apply automatically to workers concluding a contract of employment, as the majority of recruited workers take employment under contract, and the attestation of the contract frequently takes place at the same time as the verification of the recruiting operations Nevertheless, all workers who sign contracts are not recruited in the sense in which that term is used in the Recruiting Convention, and the Committee of Experts on Native Labour considered it necessary to make recommendations about the medical examination of workers about to conclude a contract of employment

Provision is made for such examination in many of the territories of contract employment, as will be seen from the following summary of law and practice

§ 1 — Law and Practice

In the *Belgian Congo* provisions concerning medical examination before the signature of the contract are contained in the Ordinance of 18 June 1930, amended by the Ordinances of 8 September 1932 and 6 August 1934

medically unfit In the *Mandated Territory of South West Africa* no Native labourer may be employed on mines or works until he has been medically examined, vaccinated if required, and certified as fit Medical examination is also required prior to employment on mines in the *Gold Coast* and in *Northern Rhodesia* and may be so required in *Southern Rhodesia*

In *Zanzibar* labourers and their families may be required to present themselves to a health officer before travelling from one place to another in the Protectorate In the *Seychelles* no labourer or his family may embark for certain specified islands without medical examination Provision for the medical examination of the general population is usually made in wide terms in sleeping sickness territories In *Nigeria* and *Uganda* the administrations have wide powers in this respect and may use them to require the medical examination of Native workers

The practice of the large employers in Africa, especially but not exclusively that of the large mines, is to maintain initial and periodical medical inspections of all their labour force On the Rand mines of the *Union of South Africa* the organisation of medical care is very extensive For all recruited labour there is a minimum of two medical examinations before employment and there are periodical inspections during the term of employment On the other hand, as will be emphasised later, the frequent employment under contract of Native workers on European farms, which are near the Native villages or which are to all intents and purposes the Natives' actual homes, does not involve the legal obligation or the practice of medical examination

In the territories of the *Pacific*, where employment is more usually the employment of recruited workers under long contract, the obligation of a medical examination for all workers in employment figures more prominently in the legislation

In the *British Solomon Islands* a medical officer or an officer with medical knowledge and experience nominated by the Government is required when conveniently available to examine all Natives employed under contract while no Native may be engaged who is pronounced to be physically unfit for the intended employment In the *Gilbert and Ellice Islands*, a 1932 Regulation provides that no contract for more than one month shall be ratified unless the intending labourer and, his wife and family if accompanying him, have been passed by a qualified medical practitioner as free from infectious or contagious disease and, in the case of the labourer as physically fit for the contemplated employment In the *Mandated Territory of New Guinea* before any labourer commences work and at the first opportunity after his recruitment, medical examination is required by a medical officer or medical assistant Should however, such examination be impracticable, the administrative officer may grant a dispensation if satisfied by personal examination that the labourer is fit for the class of work on which he is to be employed

In other Pacific territories, however the obligations concerning medical examination are of a less stringent character In the *New Hebrides* there is no compulsory medical examination, although it is provided that no Native obviously unfit for plantation labour may be recruited by British subjects, and that the Resident Commissioner shall disallow any provisional contract when, after medical examination, it is certified that the Native concerned is not physically fit for his employment In *Papua* the law provides that the decision of a Government medical officer upon the physical fitness or unfitness of a Native who

wishes to enter into a contract of service shall be regarded as conclusive Medical examination, however, is not laid down as a general obligation In the *Mandated Territory of Nauru* it is only provided that no labourer shall be required to perform any work for which he is physically unfit

The medical examination of contract workers is not imposed in the *British West Indian* and *American dependencies*

The 1906 regulations concerning Native labour in the *Spanish Possessions* of the Gulf of Guinea prohibit the engagement for agricultural employment of workers suffering from rickets, insanity, sleeping sickness or other infectious diseases The Decree of 28 October 1922 provides for the compulsory medical examination of workers embarking at Bata or Elobey for Fernando Po Instructions dated 29 March 1933 require the medical officers of each medical zone to examine recruits in particular for traces of sleeping sickness, and to vaccinate them against smallpox Natives recruited in Guinea are examined within their local medical zone and, if fit supplied with a medical pass, without which no worker is allowed to leave the zone Leprosy regulations dated 5 October 1933 prohibit the recruiting of lepers and make recruiters responsible for notifying any cases

In *French dependencies* the requirement of a medical examination for all contract workers is extensive, although in some territories it applies only to workers employed away from their district of origin

The Ministerial Circular of 22 July 1924, which is applicable to all French dependencies, stresses the need for the detailed regulation of the health conditions of Native workers, whether employed under contract or otherwise The Circular lays down that recruiting shall be limited to workers of strong physique without physical defect and certified as such by medical examination by a French medical officer at the place of recruiting On arrival at employment provision is made for (1) a second medical examination by the employer's doctor or, if there is no doctor, by a Government medical officer, (2) immediate inoculation against smallpox and, if so required by the health services, against pneumonia, typhoid, plague and cholera, (3) the keeping of a nominal roll recording the medical examination on arrival, the inoculations and the state of health of each worker

The following steps have been taken in the various dependencies in application of the above general instructions

In *French Equatorial Africa* medical examination is compulsory at the place of recruiting or, if no doctor is available, at the place of disembarkation or of employment The doctor is required to decide whether the recruit is adult and physically fit for the proposed employment and to countersign the work-book accordingly An Order of 21 December 1935 further provides that no contract shall be valid unless attested by the subdivisional officer of the place of recruiting after a favourable report by the medical authority on the physical capacities of the recruit If a medical examination is not possible at the place of recruiting, the definite conclusion of the contract is subject to the approval of the medical authorities consulted *en route* or on arrival

In the *Cameroons under French Mandate*, medical examination is only compulsory for Natives employed outside their home districts It is conducted by a medical officer of the Native medical relief service of the worker's place of origin This officer issues a certificate specifying the type of service on which the worker may be employed A duplicate is forwarded to the labour inspectorate

In *French West Africa* the law requires medical examination at the place of engagement whenever a medical officer is available and examination on arrival at employment for the elimination of unfit or doubtful cases If the second examination is not possible, medical officers of the Native medical relief service are required to examine the recruits during their periodical inspections Instructions of 1 August 1930 concerning the health of workers recruited by private persons impose further obligations A first medical examination is, wherever possible, to be effected on the selection of the recruits, when young persons under 18 years of age and those revealing any physical defect incompatible with the performance of manual labour are to be rejected A second examination takes place at the concentration centre previous to departure for employment This second inspection is the stricter of the two and corresponds to the mobilisation examination of soldiers Thirdly, on arrival at the workplace, the workers are again examined in the course of their first five days As regards children, a Decree of 18 September 1936 provides that no child may be engaged unless holding a medical certificate of physical fitness for the proposed employment

In *Togoland under French Mandate*, medical examination is compulsory both before departure from the place of recruiting and on arrival at employment

In *Madagascar*, on the other hand, medical examination is only required in the case of employment outside the worker's district of origin

In *French Somaliland* there is no legal provision requiring medical examination

In *Indo-China*, before the signing of a contract, every recruited worker is required to be medically examined and rejected if unfit Workers employed outside their home districts are examined again on arrival at employment If employed in other States of the Union or abroad, the second medical examination takes place at the port of departure

In *New Caledonia* and in the *French Establishments in Oceania*, immigrant workers are examined on the arrival of the ship by a doctor appointed by the Governor

In the *Netherlands colonies* medical examination prior to employment under written contract is usual, but is not universally required

In the *Netherlands Indies*, with one exception, all contracts which are required to be in writing may only be attested on submission of a medical certificate establishing the physical fitness of the worker for the proposed employment The exception is in the case of contracts under penal sanctions concluded in the Outer Provinces Almost invariably these are contracts with foreigners (Chinese) or with persons from an Outer Province other than that of employment In practice, preliminary medical examination is usual, at least in the case of workers recruited abroad Workers engaged under verbal agreement for foreign employment are also subject to medical examination

In *Dutch Guiana*, Javanese workers are examined afresh on arrival There is, however no obligation concerning medical examination in the case of workers engaged in the country for the forestry industry or in the case of persons of Negro descent engaged for more than six weeks on plantations

In the *Portuguese colonies*, under the Native Labour Code, although

detailed provision is made for the medical protection of workers in employment, medical examination at the time of the conclusion of the contract is only compulsory if so decided by the attesting officer Contracts may not be made with Natives who by age, disease or infirmity, are unfit for work The curator or his agent is required to refuse to co-operate in the drawing up of contracts or to ratify contracts drawn up without his co-operation in cases where the unfitness of the Native is manifest In doubtful cases he may require that the Native be examined by a medical practitioner It is also provided in the Code that medical examination to ascertain fitness for employment may be made on the initiative of the recruiter or of the employer, but that nevertheless the curator or his agent may enforce such examination when drawing up the contract

§ 2 — Conclusions

The above summary of the law and practice in the chief contract labour territories shows that the obligation of a preliminary medical examination is not so universal in connection with unrecruited contract labour as it is with recruited labour In the Belgian Congo the obligation is general In the dependencies of France and the Netherlands it is usual but not without exceptions In the territories administered by Great Britain and the Dominions, and in the Portuguese colonies, the obligation, where it exists, appears most frequently to be based on the nature of the employment or the form of the engagement rather than on the contract Nevertheless, there are frequent instances where certified medical fitness is a condition of contract employment Moreover, in the case of contracts for periods of six months or more, it seems probable that the majority of the workers concerned would directly or indirectly be already covered by provisions requiring medical examination In these circumstances, it seems reasonable to presume that the Conference will wish the Governments to be consulted on the desirability in any international regulations of providing for the compulsory medical examination of workers employed under contracts which are required to be in writing under such regulations

It is therefore suggested in the draft list of points that the Governments be consulted on the general rule that every worker should be medically examined before the conclusion of a contract required to be in writing, but that a certain elasticity should be permitted by providing that the medical examination may take place after the commencement of employment where it is not possible before, subject to the endorsement of the contract to this effect The effect of any such rule would be to make medical

examination a legal obligation at some early stage in the execution of the contract

It is, however, further suggested that a total exception should be permitted in the case of contracts concluded for agricultural employment in the vicinity of the workers' homes In considering the regulation of contracts of employment, the Conference will have chiefly in view those contracts which provide for the employment of indigenous workers at some distance from their homes and for fairly long periods There are, however, other forms of contract employment affecting large numbers of workers, particularly farm workers, who are employed under yearly contracts on the farms on which they and their families are settled It does not appear that in such cases medical examination is either necessary or desirable It is not necessary as the workers are employed under what may be described as home conditions, it is not desirable, for it is not in the interests of Natives employed on their home farms that they should be deprived of all possibility of employment by the enforcement of medical selective standards

It thus appears that if, as is suggested, the Governments are consulted on the general principle of medical examination for all workers whose contracts are required to be in writing, their opinions should also be asked on the necessity of an exception in the case of agricultural employment in the neighbourhood of the workers' homes

CHAPTER VI

CONCLUSION OF CONTRACTS BY WOMEN, YOUNG PERSONS AND CHILDREN

In the territories under consideration there is as a general rule only a limited demand for female or child labour outside the traditional economic systems Of the chief forms of employment, mining mainly employs male Natives, plantation work, though women are employed in considerable numbers in the East, is in most places preponderantly an occupation for adult men, general farm work and harvest work both on farms and on plantations make a greater demand for women and children, but usually only when available with men in family units

Moreover, the offer of female or child labour is generally not encouraged by the indigenous communities A cause of this is the very importance of women in the traditional economic systems Where wage-earning employment is only a supplementary means of existence, it is necessary to maintain the basic economic foundations of life during absences in employment, and this is only practicable if the work of women in the fields at home continues to be carried on

The third factor in labour demand and supply, the regulating power of the administration, has also in many cases been opposed to the employment of women and children, especially away from their home areas Except when it is desired to settle Native families in employment areas, the weight of Government influence has been thrown on the side of maintaining existing social groupings, either in consequence of a reasoned policy of development of the Native communities or in reaction against the difficulties caused by detribalisation

For these sets of reasons female and child labour in employment is as yet on a small scale It is by no means sure, however, that

this situation will last In the more developed regions, complaints are already common from tribal authorities on the one hand, and from European municipalities on the other, that women and children are being attracted to centres of employment to the prejudice of their own welfare and of healthy social life both in the areas of employment and in the home areas Although it is true that the attraction is often by no means the gains of legitimate employment, the possibilities of such employment may be the pretext or initial cause of migration, so that the regulation of the employment of women and children may form a vital part of general social policy

The provisions of national laws and regulations regarding the employment of Native women and children, particularly under contract, will be summarised below Some mention should, however, be made here of the recent extensions of colonial legislation applying the principles of International Labour Conventions relating to the employment of women and children in industry In many cases the laws are of a precautionary rather than of an immediately operative character, but they are creating standards of protection for women and children that cannot fail to have repercussions on the existing forms of employment

The Conference is not of course asked to consider the question of a minimum age for various forms of employment or that of the general regulation of the employment of women and children Its task on the present occasion is limited to deciding whether Governments should be consulted on any conditions which should be imposed as regards the engagement of women and children under contracts which are required to be in writing Nevertheless, this narrow question can hardly be treated in isolation from the general principles affecting the participation of the women and children in economic life, which the Conference has itself laid down in various Conventions

§ 1 — Law and Practice

Women

The contract labour laws as a whole do not throw much light on the question of the contracting of women In some cases there is an almost complete prohibition In a large number of

laws the question is passed over in silence, and, while this silence must be assumed to mean in some cases that women may be contracted on the same terms as men, in others it may be that there are no special provisions concerning the contracting of women merely because the question has not arisen in practice

In the *Belgian Congo* the Decree of 16 March 1922 recognises the contracting capacity of all adult Natives, whether male or female No woman, however, who has entered into a civil or religious marriage or who is married in accordance with Native custom, may accept a contract without the express or tacit consent of her husband Such consent does not imply his presence at the conclusion of the contract

In the territories administered by *Great Britain and the Dominions* it is only in the Pacific areas that detailed provision has been made limiting the contracting powers of women

In the *British Solomon Islands*, the *Gilbert and Ellice Islands* and the *New Hebrides*, women as a general rule may not enter into contracts In the Solomon Islands, however, an adult female may be employed in domestic service under contract to any female European Moreover, subject to the consent of her husband in the case of a married woman, to that of her guardian in the case of an unmarried woman, or to that of the district officer where there is neither husband nor guardian, an adult female may be employed from day to day on any plantation within 10 miles of her home or on any plantation at which the husband or guardian is engaged In the Gilbert and Ellice Islands a married woman accompanying her husband may be employed in work from day to day In the New Hebrides a married woman accompanying her husband or a woman accompanying her father may be similarly employed In addition, women may be employed from day to day on plantations within 10 miles of their homes, and women over 16 years of age may be employed in domestic service under engagements for not more than three months at not more than 10 miles from their homes

The situation in *New Guinea under Australian Mandate* is similar The employment of women under contract is prohibited A married woman, however, with her consent and that of her husband may be recruited for employment with her husband and an unmarried female over 14 years of age may be recruited for employment by a woman as a domestic servant, or, if under 14 years, for such employment with the consent of the competent authority The latest published figures for the year ended 30 June 1936 show that 270 Native women were employed under contract All except nine of these were employed with their husbands, the nine were single women employed as domestic servants

In *Papua* the legal restrictions are less Native women or girls may not be employed on ships If employed elsewhere they are not liable to prosecution for desertion unless engaged as domestic servants, when, however, they may only be fined Women accompanying their husbands to employment may not themselves be required to work

There are no legal restrictions in the *Mandated Territory of Nauru*, but women do not appear to be employed

Elsewhere than in the Pacific there appear to be no general limitations of the contracting of women, except that, in the *Mandated Territory of Tanganyika*, women are not allowed to be employed when accompanying their husbands under foreign contracts. In *British Guiana* there is the suggestion of a contrasting principle, it is required of a mixed-blood female, but not of a mixed-blood male, that if employed she may only be employed under contract.

In most cases the employment of women is treated as a question of general labour protection. The prohibition of the employment of women underground in mines is general. In *Kenya* Native women may not remain at night on farms unless accompanied by their relatives or unless special accommodation is provided for them, nor may women be employed more than three miles from their homes except in similar circumstances.

As regards *French dependencies* it is only outside Africa that the colonial laws mention in any way the contracting of women.

In *Indo-China* married women of more than 18 years of age may engage under contract if accompanying or joining their husbands in the same employment. Other women over 18 years of age may engage under contract without limitation except that the consent of their relatives is necessary for those under 21 years. The contract of any woman who marries during her period of service ceases as from her marriage, subject to the employer's right to claim compensation. If she marries a contract worker her contract may not continue after the conclusion of the husband's contract, although once again compensation may be claimed by the employer. The employment of women underground in mines is prohibited.

In contrast with the general position in Australian and British Pacific dependencies, women may be employed under contract in *New Caledonia* and in the *French Establishments in Oceania*. In the latter territories provision is made for the termination of the contract on the marriage of a female immigrant worker.

The International Labour Office is not aware of any special provisions governing the contracting of women in *Italian colonies*.

In the *Netherlands Indies* women may as a rule enter into contracts of service in the same way as men. When, however, a married woman is recruited in Java or Madura for the Outer Provinces or abroad, the attesting officer is required to refuse his approval unless it appears that the husband has consented to the engagement. The rules concerning the employment of Chinese labour on the tin mines of Banka and Billiton provide for the engagement of men only. In the Outer Provinces no Chinese women are employed under contract. As regards Javanese, figures show that 5,378 were employed under penal sanction contracts in 1935 as compared with 8,069 Javanese men. Of the so-called free coolies, who may or may not be under contract, 71,118 were women and 143,892 men. These figures should not be taken as giving a complete view of the situation, but they suggest that the employment of women is on a larger scale than in any of the other territories treated in this Report.

In the *Portuguese African colonies*, under the Native Labour Code the contracting of women is not prohibited. Women, however, may not enter into contracts for employment elsewhere than at the place where they usually reside unless they are accompanied by husband, father, uncle or adult brother, or unless they are to be employed in domestic service.

Children and Young Persons

The laws are more detailed on the question of a minimum contracting age It will be found, however, that the question of the regulation of forms of employment appears to be regarded as of more importance than general provisions applicable to all contract engagements

In the *Belgian Congo*, under the Decree of 16 March 1922, all adult Natives are credited with contracting rights The qualification " adult " applies to Natives both above and under age so long as they have attained normal adult development The criterion of an exact age has been rejected, as the date of birth of the majority of Natives is not registered and is difficult to estimate Under the Ordinance of 18 June 1930, Natives are subject to compulsory medical examination to establish their fitness for general employment or for light work, their physical development is ascertained at this examination

In the territories administered by *Great Britain and the Dominions*, as in the case of women, it is in the Pacific areas that provisions are most frequent prohibiting the employment of children under contract

In the *British Solomon Islands* no Native under 16 years of age may contract for any form of service other than light work, the contracting of children under 14 years of age is prohibited A Government Circular of 1927 draws attention to the fact that children obviously under this age have been allowed to contract without being accompanied by parent or guardian and instructs all Government officers to refuse permission in such cases Male children between 8 and 14 years may, subject to the consent of their guardians, be employed from day to day on light work on plantations within five miles of their homes or elsewhere if accompanied by and employed with an adult male relative The employment of children under 14 years of age in industrial undertakings or on board ship is prohibited In the *Gilbert and Ellice Islands* and in the *New Hebrides* no Native under the age of 16 years may be engaged under contract In the New Hebrides, however, males over 14 years may be recruited for employment in domestic service for periods of three months at not more than 10 miles from their homes The position in *Fiji* appears to be that children under the age of 14 years may not be engaged for more than one month

In the *Mandated Territory of New Guinea*, Natives may not be recruited who have not attained full physical development or who are apparently under the age of 14 years Permission may be granted for the engagement of male Natives over 12 years of age for domestic service and for that of male Natives over 14 years for any kind of work which is not heavy labour Permission may also be granted for the engagement of female Natives under 14 years of age for employment by women as domestic servants In *Papua* no Native child under the apparent age of 14 years may be employed unless the guardian consents and unless there is no school within a mile of the child's home which he is required to attend There appears to be no legal age limit in the *Mandated Territory of Nauru*, but only adult male Chinese are employed in the phosphate mines

In *Hong Kong* the minimum age at which a contract of service, whether verbal or in writing, may be accepted is 16 years

In Africa, on the other hand, provisions limiting the contracting of children are exceptional Minimum age legislation exists in the majority of the territories for various forms of employment For employment underground in mines this age is 16 years in *Bechuanaland*, *Nigeria*, *Northern Rhodesia* and the *Union of South Africa* It is 14 years in the *Gold Coast*, *Kenya*, the *Mandated Territory of Tanganyika* and *Uganda* There is a general minimum age of 14 years for employment in industry in the *Gambia*, *Gold Coast*, *Nigeria*, *Sierra Leone* and *Zanzibar* The same minimum age applies to employment at sea in the *Gambia*, *Gold Coast*, *Kenya*, *Nigeria*, *Sierra Leone* and *Zanzibar* The minimum age for industry is 12 years in *Kenya*, *Northern Rhodesia* and *Uganda* For other employments, minimum ages have been laid down in certain cases In *Kenya*, for example, children under 16 years of age may not be employed as porters, fuel cutters, trolley or rickshaw boys or in any other class of labour considered unsuitable by a Government medical officer

It is apparently considered in the African territories that the fixing of a minimum age for different forms of employment is a more practical way of preventing abuses in the employment of children, which as yet is on a small scale, than their exclusion from contracts of service The Tanganyika Report on the Labour Department for 1929 points out that, if the contracting of the juvenile members of a party is refused, almost invariably the juveniles contrive to accompany the party They are thus without the protection of the contract

A minimum age, however, is sometimes laid down in Africa in the case of recruited labour

In the *Union of South Africa* no contract for a labourer recruited by a labour agent may be attested unless the Native is apparently over the age of 18 years This prohibition has been relaxed to permit the recruiting of juveniles over 16 years of age for agricultural employment with the consent of their parents Complaints have been made that in fact such consent is often not obtained Under the Native Service Contract Act there is a minimum age of 10 years The guardian of any Native between 10 and 18 years of age is authorised to contract such Native to the owner of the land, to render service to the owner at any place in the Union Under the Masters and Servants laws a servant may contract the service of any of his children under 16 years of age for service in the employment where he is himself employed

In *Basutoland* and *Swaziland* there is a minimum age of 18 years for recruited labour

In the *Central* and *East African dependencies*, while in practice it would appear that an officer would not attest an immature child except under an apprenticeship contract or for employment with relatives, the labour laws contain no minimum contracting age In *Southern Rhodesia* the Native Juveniles Employment Act empowers a Government officer, in the absence of a parent or guardian, to contract any juvenile for a period not exceeding six months This power has been limited to children over 10 years of age

Age limitations have been laid down for foreign contracts in the *West African dependencies* The minimum age is fixed at 16 years in the *Gambia*, *Gold Coast* and *Nigeria*, and 14 years in *Sierra Leone*

In the *West Indian dependencies* there are limitations on the emi-

gration of children who are not accompanied by their parents There does not appear, however, to be any general minimum age in the labour laws concerning contracts of service Here again the minimum age is fixed in virtue of the nature of the employment In *Barbados* there is a minimum age of 12 years for employment in industry and at sea In *Jamaica* the minimum age is 14 years for employment at sea and 12 years for all other employments In the *Windward Islands* the age is 12 years for industry and sea In *Trinidad* it is 18 years for employment on oil tanks, 16 years for certain dangerous employments, 14 years for employment in industry and at sea and 12 years for other employments

In *British Guiana* there is a minimum contracting age of 10 years under the Immigration Ordinance This Ordinance, however, has no longer any practical effect Under other laws minimum ages have been fixed of 14 years for underground employment, 12 years for industry and sea, and 9 years for other employments In *British Honduras* 14 years has been fixed as the minimum age for employment in industry and at sea

In the *Spanish* colonies the 1906 Regulations prohibit the employment in agriculture of persons under 15 years of age, children between 10 and 15 years of age may be employed in domestic service on condition that the work is suitable to their age

The situation in the *French dependencies* is as follows In the Pacific and in Indo-China the question of the engagement of children is treated in connection with the conclusion of contracts In Africa the question is rather that of a minimum age of employment, although legislative texts, mostly of recent date, which fix this age for all employments, thereby involve the establishment of a minimum contracting age

In the *Cameroons under French Mandate* a Decree of 14 September 1935 prohibits the employment of children under 12 years of age in all agricultural, commercial and industrial undertakings other than those in which only members of the same family are employed Children between the ages of 12 and 14 may be employed if of sufficient physique and subject to the consent of the district officer, permission may only be granted on such conditions as the limitation of hours to eight in the day, a compulsory daily rest of one hour and the prohibition of night work

In *French West Africa* restrictions have been imposed in virtue of the principal Ordinance of 1926 which provides for " the prohibition of the employment of persons physically unfit on account of age " By decisions of the Lieutenant-Governors promulgated between 1926 and 1929 the following minimum ages have been established Ivory Coast, 20 years for heavy and 15 for light work, Senegal, 18 years, Dahomey, 20 years for heavy and 16 for light work, Sudan, 17 years, French Guinea, 18 years, Upper Volta, 18 years, Mauritania, 18 years for ordinary and 12 for light work A Decree of 18 September 1936 concerning the employment of women and children in French West Africa consolidates the general rules It provides that in public or private undertakings minimum ages shall be fixed by Orders of the Lieutenant-Governors subject to a maximum of 14 years of age for general employment and of 16 years for forestry undertakings In all cases the child must have been certified as fit, his employment is subject to the consent of his parents, and corporal punishment is prohibited

There are no provisions concerning minimum age in *French Equatorial Africa* or in *Togoland under French Mandate*

In *Madagascar* it is provided that (1) Natives of either sex may only be employed as permanent or daily workers in public or private undertakings from the age of 18 years, (2) the night work of young persons under 18 years of age is prohibited, as well as their employment in carrying loads in excess of 20 kilos [1], (3) children may only be allowed to work on light field work

In *French Somaliland* the Decree of 22 May 1936 contains provisions relating to the minimum age which are the same as those in force in Madagascar

In *Indo-China* contract employment is open to persons over 18 years of age and to children of either sex accompanying or joining their parents for employment in the same undertaking The law governing non-contract labour lays down a minimum age of 12 years for employment in industrial, mining or commercial undertakings

In *New Caledonia* the Decree of 24 December 1935 applicable to Asiatic immigrants provides that no minors may be engaged without the consent of their parents expressly given in the presence of a Government officer In the case of Javanese the model form of contract prohibits the engagement of the workers' non-adult children On the other hand, from the age of 18 years young persons who have accompanied their parents and who are certified as fit for employment are required to enter into contracts for the remaining periods of employment of father and mother

In the *French Establishments in Oceania*, children over the age of 12 years, accompanying immigrant workers, are required to accept contracts The contracts of children, however, are subject to the consent of their parents, and as far as possible children may only be employed in the company of their parents For workers other than those subject to the immigration laws 14 years is the minimum contracting age

The Office has no information of any legal provisions limiting the contracting capacity of children and young persons in the *Italian colonies*

In the *Pacific Islands under Japanese Mandate* a minimum age of 15 years has been fixed for employment on the mines of Angaur

In the *Netherlands Indies* it is laid down that only adults may be engaged for contract employment in the Outer Provinces under penal sanctions In practice the same rule is followed in the case of other contracts which are required to be in writing Moreover, as stated above, the model contract for employment in New Caledonia prohibits the engagement of non-adults (under 18 years of age)

In *Dutch Guiana*, beyond the provisions of the Civil Code, the only legal stipulation concerning the engagement of young persons under contract is contained in the 1911 Labour Ordinance It is there provided that minors over the age of 18 years may be engaged for the forestry industries unless objections are raised by their legal representatives These objections may be made to the competent authorities and remain valid until the young persons are of age

---

[1] From the Governor's Circular of 8 December 1936 it would appear that this provision applies to apprentices

In the *Portuguese African colonies* the Native Labour Code provides that contracts may not be entered into for the agricultural or industrial employment of children under the age of 14 years, but that such children may accompany their parents or uncles who are under contract As regards young persons between 14 and 18 years of age, contracts are subject to the consent of their guardians In cases where there is no documentary proof, the ages of Natives are estimated by their physical development

§ 2 — Conclusions

The questions considered in this chapter are of no little difficulty On the one hand, it will no doubt be widely felt that contract employment, when it involves long service, absence from home and special forms of discipline, is particularly undesirable in the case of women and children On the other hand, it will be realised that contract employment, subject as it is in almost all colonial legislations to careful and detailed regulation, affords a much greater measure of protection for the workers than non-contract employment If certain classes of persons are debarred from concluding long-term contracts, will the practical effect be to restrain them from taking employment involving long absences from their homes, or will it merely be to deprive them of the protective measures which safeguard contract employment ? The decisions to be taken must depend to some extent on the answer to this question

However, in regard to women, in particular, there are a number of other considerations which must be taken into account In the first place, there are the general principles of equal opportunity of employment, which need not be further emphasised here Secondly, there are particular arguments based on the special circumstances of the employment of indigenous labour In many of the territories under consideration, serious social problems have been created by rapid economic development leading to the absence of the men from the villages and to the absence of women in centres of employment The solution of this problem of sex ratio which consists in encouraging the accompanying of workers by their families to the place of employment might be facilitated in suitable cases by permitting the employment of women Many of the women concerned appear no less fit than men for some forms of contract employment, they are accustomed to play a large part in indigenous economic life not only as agriculturists but also as traders and sometimes as artisans

On the other hand, gross abuses have sometimes accompanied

the employment of women as contract workers, especially in Pacific areas, and the need to prevent such abuses is reflected in the restrictive provisions of some of the Pacific legislation summarised above Abuses have also occurred in some parts of Africa, although it must be recognised that the gravest social problems affecting women in that continent arise much more from circumstances favourable to the development of detribalisation, prostitution and polygamy than to their employment under contract or otherwise

Another consideration which is suggested by the summary of law and practice is that the question of the liberty of women to make labour contracts is one that is much more affected by differences in social development than other problems of the contract In Africa social conditions themselves limit the employment of women indigenous customs, the labour demand and administrative policy are all unfavourable to the long-term employment of women away from their homes On the other hand, the contrast between the position in the Netherlands Indies and Indo-China, where the contract employment of women is largely permitted, and the position in the Australian and British Pacific dependencies, where it is prohibited, affords a striking illustration of the diversity of conditions which have to be covered by any international decision on contract labour

The Committee of Experts on Native Labour, in view of this diversity, could only recommend that the national law or regulations " should determine the classes of persons who may be permitted to engage for service under written contracts of employment " without making any specific recommendations in regard to women Probably the Conference will agree that a formula of this nature, raising the possibility but not defining the details of special conditions for the engagement of women under contracts which may be required to be in writing, should be suggested to the Governments as the guiding principle It may, however, be thought that the Governments should also be consulted on the advisability or inadvisability of providing for one form of restriction on the contracting of women, namely, that women should not be permitted to conclude contracts, which under the international regulations are required to be in writing, except for employment with their husbands or adult male relatives or for employment in domestic service This is very similar to the provision in the Portuguese Native Labour Code It is less strict than, but of not dissimilar practical effect from, the chief laws in Australian

and British Pacific dependencies Its application to married women would appear to be in accord with the law in Indo-China Although in the Belgian Congo and in the Netherlands Indies the law only requires that the husbands of married women should consent to the contract, and although in most of Africa there are no legal limitations on the contracting of women, the other cases are sufficiently widespread to suggest that it would be appropriate for the Governments to be consulted in this sense, while the question is of sufficient importance to make such a consultation desirable It is indeed in connection with the employment away from their homes and without their husbands of married women and the employment of unmarried women without the protection of their male relatives (father, uncles, etc) that abuses have most frequently occurred

As regards children and young persons, it appears that once again the guiding principle to be suggested must be that the conditions for the conclusion by such persons of contracts which are required to be in writing should be determined by national law and regulation It seems, however, on the assumption that contracts will be required to be in writing only for engagements of, or in excess of, such a period as six months, that it is necessary to ask whether this guiding principle should not also be subject to certain international limitations

The Committee of Experts on Native Labour recommended that " young persons who are apparently under a minimum age to be prescribed by law or regulations should not be permitted to engage for service under a written contract of employment In applying this provision account should be taken, *inter alia*, of sex, the nature of the employment and the physical development of the populations concerned " Further, while not desiring to recommend it as a principle, the Committee recorded its opinion " that young girls should not be employed otherwise than in domestic service or as nurses, or, if they are with their families, in light agricultural work, and that the employment of juveniles should be restricted to suitable classes of work under appropriate conditions "

These suggestions are confirmed by many of the national laws In the Belgian Congo an age-limit has not been provided but contracts are limited to adults and the nature of the employment for which the worker is fit is established by medical examination The limitation by law and practice of contracts for adults is also to be found in the Netherlands Indies In Australian and British

Pacific dependencies it is usual to provide a minimum age for all contracts and a limitation of the contracts of young persons over this age to light services In Indo-China there is a high contracting minimum age for unaccompanied employment, but children may be contracted who are working with their parents In the Portuguese African colonies there is a minimum age, but once again children may work with their parents In British African dependencies in the Union of South Africa and in French African dependencies the emphasis is placed on a minimum age of employment, although where this is of general application, as in French West Africa, it naturally applies to all contract labour

While it may be difficult to reach international agreement on a general limitation of contract employment on the basis of precise age limits, it appears that a consultation of the Governments on the points suggested by the Committee of Experts and confirmed by so many national provisions is required In this event, the Conference, in view of the divergent physical development of children among the peoples concerned, of the difficulty of establishing their precise ages and of the fact that the general limitation of child employment is outside the scope of any international decision on contracts of employment, may consider it appropriate not to suggest any precise age limits for the questions to the Governments, but to leave this to be determined by national law or regulations This will be following the precedent of the Recruiting of Indigenous Workers Convention, which in Article 6 prohibits the recruiting of non-adult persons but leaves the definition of non-adults to the national authorities

The points submitted for the consideration of the Conference on the conclusion of contracts of women, young persons and children are drafted in the light of these considerations

CHAPTER VII

LENGTH OF CONTRACTS

One of the most important problems in connection with the contracts of indigenous workers is that of their duration Until comparatively recent times contracts for a period of from three to five years were still common This was one of the points that gave rise to the most vigorous objections to the system of contracts for indigenous labour, it was often pointed out that contracts for such a long period, combined with penal sanctions, involved an intolerable restriction of the liberty of the Native During recent years the tendency in most colonial territories has been to restrict more and more the maximum length of the contract An analysis of the existing laws brings to light a certain uniform trend under the surface differences

§ 1 — Law and Practice

In the *Belgian Congo* the Decree of 16 March 1922 stipulates that no contract of employment may exceed three years In view of the express provision of the public law the parties may not fix a longer period even by mutual consent When expressly or implicitly an agreement stipulates for a longer period, the figure is automatically reduced to three years If the contract does not specify the length of the engagement, the parties are considered as intending the contract to run for such period as may be customary, subject always to the three-year maximum

In the territories administered by *Great Britain* and the *Dominions* the legal maximum period of contracts varies considerably in the different territories and occasionally in the case of different employments in the same territory In many territories the legal maxima are reduced in practice and in some, while the provisions of the law remain, the long-term contract is practically obsolete

In the *Union of South Africa* the legal maximum duration of the contract ranges between one and five years The provincial Masters and Servants laws permit five-year contracts in the Cape and Transvaal, three years in Natal and two years in the Orange Free State Labour

tenant contracts are limited to three years In practice agricultural service contracts are usually oral and do not exceed one year Contracts for employment on mines and works are by law limited to 360 working days Portuguese labour imported under the Mozambique Convention is contracted for one year For British South African Natives on the Rand mines, contracts are in practice for from 260 to 313 working shifts, although non-recruited workers and workers proceeding to the Rand by the voluntary assisted scheme may obtain shorter contracts Labour recruited for the Natal sugar estates usually contract for 180 days' work

The general five-year maximum contained in the Cape and Transvaal Masters and Servants laws has been extended to *Basutoland*, *Bechuanaland* and the *Mandated Territory of South West Africa* In *Swaziland* the maximum is 360 working days In *Southern Rhodesia* it is three years In these territories again, however, in practice contracts appear to be limited to one year or less The Rhodesian Native Labour Bureau, which was dissolved in 1933 used to supply labour under 12 months' contracts, but one of the reasons for dissolution given in its final report was the reluctance of Natives to accept long contracts and now the usual practice in Southern Rhodesia appears to be for monthly contracts In the Mandated Territory of South West Africa labour recruited for the mines is engaged for 180 working shifts

In the Central and East African Dependencies of Great Britain the usual maximum legal period of contract is two years *(Kenya, Uganda, Zanzibar, British Somaliland, Northern Rhodesia)* In the *Mandated Territory of Tanganyika* this is reduced to twelve months for contracts to be performed outside the district of recruiting

In *Northern Rhodesia* labour used to be recruited for the copper mines on six-month contracts Apparently the labour is now engaged on monthly agreements Recruiting which has taken place in *Nyasaland* for the Rand mines is understood to be for 313 working shifts and the Nyasaland Emigrant Labour Commission of 1935, faced with the immense loss to the territory resulting from emigration and the lack of protection and control of emigrant labourers, favoured the conclusion of written contracts but recommended that their duration should be limited to one year The report notes, however, the dislike of the Nyasaland Native for long-term contract employment In East Africa the large majority of workers engage on tickets of thirty days, and such written contracts as there are do not usually exceed six-monthly tickets

The contracts of resident Native labourers in *Kenya* are for from one to three years A recent Bill proposes to increase the maximum period to five years Nevertheless after one year a contract may be terminated by six months' notice on either side In *Nyasaland* contracts for labour tenants are for five years As already stated, the persons concerned in Kenya appear to be Native labourers employed under a special labour contract, whereas in Nyasaland they more closely approach the position of tenants and would probably fall outside the scope of any international decision on contracts of employment The Conference, however, may wish to keep the situation in mind in fixing any minimum duration of contracts in view of the value of giving labourers largely remunerated by agricultural privileges a certain security of tenure

The legal maximum length of contract in the British West African dependencies ranges from one year to three years In the *Gold Coast* the period is three years, but fifteen months for employment on mines

and works In *Nigeria* the period is two years In *Sierra Leone* it is two years for general labour and twelve months for employment on mines and works In all the West African dependencies the maximum duration of a foreign contract is thirteen months

In practice the long-term contract is very unusual in West Africa Practically all the manual labour is employed on daily agreements Exceptions are to be found in forestry undertakings where contracts of one year are sometimes accepted, in the employment of Africans by Africans in the Gold Coast cocoa industry, where agreements may be for the season or for one year, in contracts between lighterage companies and boatmen, which are for a specified number of trips subject to a maximum duration of twelve months, and in six-weekly agreements on certain Nigerian tin mines, which agreements have been found necessary for the control of sleeping sickness

In *Mauritius* the maximum length of oral or written contracts was reduced to one year in 1934 Indian workers employed on the sugar plantations are engaged by the day or from month to month by oral agreement

In the *Seychelles*, for service on the outlying islands, contracts may be for three years In practice six-monthly contracts appear to be the rule On the main islands employment is in practice from month to month

In *Hong Kong* the maximum length is five years in the case of contracts for service outside the colony and three years in the case of contracts for service in the territory In *North Borneo* it would appear that any contract can be terminated by one month's notice The same applies to *Sarawak*

In the *Pacific* dependencies, in contrast with the African situation, the tendency is for the actual contracts to be for the maximum period permitted by law

In the *British Solomon Islands* the maximum duration of a contract is two years In the *Gilbert and Ellice Islands*, the *New Hebrides* and *Nauru under Australian Mandate* it is three years It is also three years generally in the *Mandated Territory of New Guinea* and *Papua*, but in the former mining labour contracts may be reduced to two years and in the latter contracts for miners and for carriers may not exceed eighteen months, except with special permission In *Fiji* the maximum length of contract permitted by law is one year

In *British Guiana* the Immigration Ordinance permits three-year contracts for female labourers and five years for male labourers This Ordinance, however, no longer has any practical effect The general labour law provides that unless otherwise specified, contracts are for one month, which appears to be the usual practice For aboriginal Indians contracts for six months are permitted In *British Honduras* the maximum duration is three years

In the *West Indies* a maximum limit of one year is found in some of the laws In practice, however, long-term contracts are obsolete

In the Spanish territories in the *Gulf of Guinea* the duration of the original contract is fixed at one year

The legislation of the *French dependencies* is more or less uniform as regards the maximum length of contract

In *French Equatorial Africa* the legislation fixes the maximum length

of the contract at two years This includes the outward and the return journey, except that in the case of contracts for one year or less the engagement is deemed to begin on the day on which the worker reaches his place of employment

In *Cameroons and Togoland under French Mandate*, *French West Africa*, *French Somaliland* and *Madagascar* the maximum length of contract is fixed at two years, the original contract being renewable by the parties if they so desire

In *Indo-China* the legislation applying to " free " workers limits the length of their engagement to one year, services hired for an indefinite period may come to an end at the desire of either party on giving fifteen days' notice In the case of labour under written contract the length of the engagement for employment within Indo-China may be settled by the parties as they desire, subject to a maximum of three years, in the case of emigrant coolies from Tonking the maximum length of the contract is three years in the case of employment in Southern Indo-China, and five years in the case of employment outside Indo-China

In *New Caledonia* the maximum length of contract is fixed as follows (1) two years for Native workers of Oceanic race, (2) in the case of immigrant labourers (Javanese, Annamites, etc) five years in principle for the first engagement, with the possibility of re-engagement for a period of not less than six months and not more than two years

In *French Oceania* the period of engagement for immigrant workers is settled by agreement between the parties, but may in no case exceed five years The period is limited to one year for non-immigrant workers

In the *Italian* colonies the law and practice with regard to contracts may be summed up as follows

In *Eritrea* the duration of contracts of employment is not limited by law, but it would appear that workers employed in commercial, industrial and similar undertakings never accept engagement for more than six months at a time The period of service usually does not exceed three months Native agricultural workers employed on estates generally accept engagement for the calendar or agricultural year They usually come from villages in the neighbourhood of their place of employment, and are accompanied by their families Workers not employed on agricultural undertakings, on the other hand, generally leave their families at home

In *Somaliland* there are no legislative restrictions concerning the length of the contracts of industrial workers It would seem, however, that the employment exchanges attached to the district commissariats for the purpose of securing the engagement of workers do not permit contracts to be concluded for more than six months This figure is extended to one year in the case of workers engaged by the authorities With regard to agricultural workers, the legislation does not fix the length of the contracts of those permanently established on concessions In practice they are engaged for the agricultural year Tenancy contracts are usually concluded for one year, but the special contract customary with the *Societa Agricola Italo-Somala* is for four years

The legislation of the *Netherlands Indies* contains separate provisions concerning contracts for employment in a territory under another administration, and those for employment in the Netherlands Indies

In the case of workers who are to be employed in a foreign possession or in Dutch Guiana, the drafting of model contracts is in the hands of

the Governor-General, who is thus able to fix their maximum duration A definite tendency may be noted to reduce the length of the contracts of such emigrant workers In the British colonies which employ labour from the Netherlands Indies (Straits Settlements, Federated Malay States, Sarawak and North Borneo) long-term contracts for immigrant workers have been suppressed in recent years, and have been replaced by oral agreements for a period of not more than one month In the case of workers from the Netherlands Indies employed in the French colonies, the model contract for New Caledonia (Javanese emigration to Cochin-China may, it would appear, be considered as having finally ceased) always makes provision for a five years' engagement Since 1927, however, the contract contains a new clause permitting workers to give notice at the end of three years for serious family or health reasons Moreover, workers are no longer obliged to make good days of work that have been lost during the period of the contract In the case of labourers engaged for Dutch Guiana, the prescribed model contract is for a period of five years reckoned from the day on which the worker arrives in the colony Extensions of the contract to make up for time spent in prison or days of absence from work may not exceed six months in all

With regard to workers employed in the Netherlands Indies a maximum period of service is fixed by the legislation only in the case of those employed under penal sanctions In 1880 the maximum was fixed at three years, and was reduced to two years in October 1936 The Regulations concerning Chinese labour in the Banka tin mines retain the three-year maximum, although it is expected that it will soon be reduced to two years In Billiton the maximum legal duration of contracts is two years, in practice workers are engaged for one year only

The legal provisions permitting the addition to the length of contracts involving penal sanctions of days lost by the worker have been gradually made less severe Since 1931 employers may not require their workers to make up time lost through holiday or illness Only in the case of unjustified absence or imprisonment are days added to the contract, the prolongation of which on this account may in no case exceed a third of the length of the contract

No maximum duration has been fixed for workers engaged in, or transferred to, the Outer Provinces as "free" workers The great majority of the workers engaged locally are employed as casual labourers either for a specified task or, less frequently, by the day Others are employed more regularly for an indefinite period or for a period determined by custom or by the method of wage payment, etc

According to the somewhat incomplete information received by the International Labour Office there would appear to be considerable variations in the length of the contracts of "free" workers brought to the Outer Provinces from elsewhere The model contracts in use on the East Coast of Sumatra prescribe a period of service of two years on tobacco plantations and one year on other plantations In Banka, "free" workers are engaged for one year The Report of the Labour Inspectorate for the Outer Provinces in 1928 mentions that three-year contracts are used in some undertakings in the Moluccas In the "panglongs" in which Chinese from British Malaya are employed side by side with workers engaged locally, contracts are for an indefinite period

In *Dutch Guiana* the contracts of Javanese immigrants, as mentioned above, are for a maximum period of five years In the case of workers

engaged locally, no maximum is laid down in the legislation of Guiana The Labour Ordinance of 1911, however, permits workers engaged in forestry undertakings for a period of more than one year to terminate their engagement at the end of the working season, provided that they refund to their employer any amounts owing to him In practice, the contracts of the workers in question are from 90 to 150 days

Section 123 of the *Portuguese* Native Labour Code stipulates that the length of contracts concluded with the co-operation of the authorities is to be fixed by the month or by the year, and may not exceed (*a*) two years in the case of employment in the colony of origin, (*b*) three years in the case of employment outside the colony If he considers it desirable the Governor-General of the colony may fix a lower maximum for such contracts

In the case of contracts concluded without the co-operation of the authorities, the length of a written contract is to be expressed in months and may not exceed one year If the contract is oral it may not be either for an indefinite number of working days of actual work or by the week or month, except under the conditions laid down in the Civil Code concerning domestic service

The Code requires the employer to retain the worker in his service during the period fixed in the contract, and not to dismiss him against his will except for a sufficient reason approved by the curator or his agent

By Decree of 2 October 1936 the Portuguese Government has endeavoured to encourage workers recruited for the colony of S Tome and Principe to settle as " free " workers on the expiration of their contracts expired With this in view the length of the contract has been limited to four years

§ 2 — Conclusions

The preceding survey shows that there is a great diversity in the law and practice of different territories with regard to the duration of Native labour contracts This diversity can doubtless be explained in part by the colonial history of the various countries, the policies and habits of the colonising race, the geographic and demographic conditions of each territory, and the degree of development and civilisation of the indigenous population There are, however, a certain number of more constant factors which exercise a considerable influence both on the maintenance of the practice of long-term contracts and on the length of these contracts These factors are (1) the fact that employers are involved in considerable expense in recruiting, transferring and acclimatising their workers, (2) the fact that there is a shortage of labour, or that a large number of workers is required, so that the authorities and the employers are obliged to organise the labour market with the utmost care, (3) the expediency from the point of view of the authorities of insisting on contracts as a means of supervision in the interests of public order, of the employers, of the workers

and of the Native population, (4) the adoption of a policy of encouraging the workers to settle in the neighbourhood of the undertakings where they are employed

In the territories or districts where the factors mentioned above are not operative or only slightly so, there is an increasingly marked tendency to do away completely with long-term contracts, workers are engaged by short-term verbal agreements for perhaps one month at a time, renewable at the will of the employer and the worker This tendency is not restricted to workers engaged for employment in the territory to which they belong, it also affects a large number of migrant workers, more particularly those belonging to races that have for a long time been in the habit of following certain definite channels of migration

Similarly, when one or more of the factors mentioned takes effect, it influences the extent to which long-term contracts are used and the duration of such contracts, whether these be for employment in the country or abroad Nevertheless, presumably as a result of variations in the relative importance of different factors, the maximum duration fixed for contracts by law or by custom is generally higher in the case of contracts for employment abroad

The length of Native labour contracts is therefore determined by the desire of employers to recover the sums expended on the engagement of the workers, by the state of the labour market, by administrative considerations, by the extent to which a policy of transferring families is practised, and by the fact of the contract being for employment within the territory or outside it To these factors must be added the question of the policy of encouraging workers to bring their families with them even when it is not proposed that the workers should settle permanently in the neighbourhood of the undertakings Mention should also be made of the special conditions laid down in certain contracts for agricultural labour according to which a considerable fraction of the workers' remuneration takes the form of permission to settle on the farm, to cultivate a patch of land on his own account, and possibly to have certain grazing rights

In view of the differences in the situation in various territories and the large number of factors affecting the duration of contracts, the Committee of Experts on Native Labour formulated its recommendation about the length of contracts in very general terms

" The maximum period of service that may be stipulated in written contracts of employment should be prescribed by law or regulations This period should be as short as possible "

The Committee added the following commentary on the principle

"Without attempting to lay down any general fixed maximum, the Committee considers it desirable that contracts for employment in another territory or involving a journey overseas of any duration should not exceed 36 months (12 months in the case of continental Africa) and that contracts for employment within the worker's home territory should not exceed a period of 12 months"

It will thus be seen that the Committee of Experts, while not attempting to recommend the adoption of a single maximum figure for general use, suggested as an indication certain restrictions based essentially on the distinction between employment in the worker's home territory and employment in a territory under another administration It introduced, however, two other conditions the maximum figure of thirty-six months in the case of contracts for employment abroad was to apply only if the contract involved a journey overseas of some duration, whereas the maximum duration was to be twelve months for the whole of the African continent The text adopted by the Committee makes no mention of migrant workers in other continents than Africa who are not required to undertake a journey overseas of any duration to arrive at their place of employment, it is perhaps reasonable to assume that the Committee intended to assimilate the case of such workers to that of workers concluding a contract for employment within their home territory, in which case the maximum duration of the contract would be twelve months

Although these are merely suggestions, the Office considers that it should propose to the Conference that Governments be consulted as to the desirability of including them in the proposed international regulations The Office also thinks it desirable to consult Governments on certain other points not mentioned in the conclusions of the Committee of Experts

The reason for the Committee's suggestion that thirty-six months should be the maximum length of contracts for employment in a territory under another administration and involving a journey overseas of some duration, whereas the maximum for other contracts should not exceed twelve months, obviously was the fact that the expenditure involved in the engagement of workers under such conditions may be considerably higher than that involved for a journey by land or a short sea journey It is however open to question whether the financial factor justifies such a considerable difference in the maximum duration of the two types of contracts and whether indeed the financial factor is the only one to be considered The Office therefore proposes that Governments be

consulted as to the desirability of fixing a maximum duration of less than thirty-six months for the contracts of migrant workers It further proposes that another factor be taken into account in fixing the maximum, namely, whether or not the worker is accompanied by his family

One of the strongest objections to long-term contracts is that they frequently involve the separation of workers from their families It is unnecessary to discuss at length in these pages all the undesirable features of a system which removes the indigenous worker from his family and his tribe for a long period The disadvantages are well known the psychological and moral effects of the separation on the worker and the consequences of the man's absence on the material and moral wellbeing of his family and the stability and social organisation of the Native community The International Labour Office therefore considers it desirable to consult Governments as to whether it is necessary and possible to take into account, in fixing the maximum length of Native labour contracts, the fact of the worker being accompanied by his family or not In the opinion of the Office the duration of the contracts of workers proceeding alone to their places of employment should be as short as possible, whereas there would be no objection to considerably longer contracts when the workers are accompanied by their families, provided that suitable arrangements are made for the accommodation and wellbeing of the families, that the contracts contain clauses permitting termination before the normal expiry and that the system of penal sanctions is appreciably attenuated The same applies, in the view of the Office, to contracts providing for the settlement of the worker or his family in the neighbourhood of the undertakings

In the case of contracts for agricultural labour in which the Native receives, in return for his work and that of his family, the right to settle on his employer's farm and to cultivate a patch of land for himself, it may not seem desirable to propose any fixed duration Such contracts may on the one hand have the disadvantages inherent in any long-term contract, but they may on the other hand have the advantage from the worker's point of view of guaranteeing a certain security of tenure which is extremely valuable in the peculiar circumstances under which the Natives live in certain territories The Office will therefore propose that Governments be consulted as to the desirability of excluding this type of contract from any provisions which may be proposed concerning the maximum length of contracts

CHAPTER VIII

TRANSFER OF CONTRACTS

The question of the transfer of contracts may arise when an undertaking changes hands or when for some reason or other the employer who signed the contract wishes to transfer the worker to another employer or simply to another undertaking under his own management It would appear natural that such a transfer should be subject to the condition that the worker agrees to the proposed change of employer or employment, and the legislation of certain colonial territories contains a clause to this effect The question of the transfer of contracts, however, is far from being regulated in every territory

§ 1 — Law and Practice

In the *Belgian Congo* the law prescribes that the worker may, with his own consent and that of the employer enter the service of a new employer before his contract has expired In such cases the following conditions are to be observed (1) the worker may not be engaged by his new employer for a longer period or under less favourable conditions than by his former employer, (2) the new employer is required to fulfil the obligations undertaken by the former employer under the original contract, (3) the former employer remains jointly responsible for the obligations of the new employer towards the worker

Except in the Pacific areas the laws in the territories under *British* and *Dominion* administration are for the most part silent on the question of the transfer of contracts

In the *Union of South Africa* and in many of the territories influenced by South African law the only general provision with any bearing on the transfer of a contract from one employer to another permits the widow of a deceased employer to claim the services of an agricultural or domestic servant or either until the normal completion of the contract This provision is to be found in the laws of the Cape and Transvaal Provinces the *Mandated Territory of South West Africa*, the *South African territories* administered by *Great Britain* and in *Southern Rhodesia* In *Northern Rhodesia* there is a similar provision, but the transfer is subject to the approval of a Government officer

The transfer of a contract from one employer to another is dealt with directly in the Union Native Service Contract Act If the control of any land used by a Native under labour tenant contract passes from the employer to another person, the contract continues as if no change has taken place, but either party is entitled within three months to terminate the contract by three months' notice In *Kenya* the contract of a resident Native labourer is deemed to be transferred to the new occupier on a change of occupancy on the farm

The transfer of a Native under contract from one employment or place of employment to another appears in Africa to be dependent on the terms of the contract and as the contract is normally required to specify the nature of the employment and the place or limits within which the service is to be performed, appears to require the execution of a new contract

The Cape law provides that no servant contracted to perform service at the residence of or at any particular place of trade or business occupied by his master shall be bound without his consent to continue his service in the event of his master moving more than two miles Similar provisions exist in the Transvaal, the *Mandated Territory of South West Africa*, the *South African territories* administered by *Great Britain*, and *Southern* and *Northern Rhodesia*

In the *Pacific* area provisions regarding the transfer of a contract are fairly detailed In the *British Solomon Islands* the law covers the transfer of a contract to another employer and the transfer of the worker's services to another place of employment under the same employer With the worker's consent his transfer to another employer is permitted if made before a Government officer Transfer to another plantation with the worker's consent similarly requires the approval of the Government officer, but in case of urgency the proper officer may, subject to such conditions as he may impose, permit the transfer without the worker's consent In the *New Hebrides* the law stipulates that no transfer may be permitted unless fully accepted by the worker and authorised by the competent authority In the case of the transfer of a contract from a French employer to a British employer or *vice versa* the permission of both the French and British authorities is required

In *Fiji* any Fijian worker employed on a plantation may, with his consent and under the supervision of the competent official, be transferred to another employer In the case of transfer to another plantation belonging to the same employer the consent of the competent authority is sufficient

In *New Guinea under Australian Mandate* provisions regarding transfer are again detailed The general rule is that no transfer is permitted except with the consent of the worker given in the presence of a Government officer and with that officer's approval, the transfer being endorsed on the contract The exceptions for the most part hardly more than simplify the procedure A worker may, with his consent and the consent of a Government officer, be transferred to another employer for work as set out in his contract for a period of not more than three months or, if a domestic servant, not more than twelve months As regards transfer between undertakings belonging to the same employer, it is provided that, notwithstanding the terms of his contract, a worker, with the consent of a Government officer, may be transferred within the same district but that, except as otherwise provided in the contract, a worker may not be transferred to another district except with both his consent and that of the Government

officer In the case of the transfer of an undertaking, the worker's contract may be transferred with the consent of the officer Lastly, without the consent of the worker or of the local officer but with the consent of the central authority, a contract may be transferred from one person to another or the place of performance of the contract transferred from one place of employment to another belonging to the same employer

In *Papua* a Native may, with the written sanction of a magistrate, be transferred by one licensed recruiter to another A Native under contract may, with his consent and the written sanction of a magistrate be transferred or hired out by one employer to another, except that by proclamation it may be declared that Natives whose homes are in certain districts shall not be so transferred When a worker is hired out, a magistrate may impose such conditions as he thinks fit to secure compliance by the employer with the terms of the contract

In the *French dependencies* in Africa the legislation generally makes no mention of the transfer of contracts The only reference is in a special Order for the Upper Volta which formally prohibits the automatic transfer of workers to another employer or their transfer to another district or their employment on work other than that specified in the contract When it is absolutely necessary for the proper working of the undertaking however and provided that the physique of the workers in question does not make the change undesirable, workers may be transferred or employed on new tasks with their express consent

In *Indo-China* the transfer of contracts is permitted only with the consent of the worker concerned and the authorisation of the administrative authorities Similarly the law applicable to Javanese workers engaged by contract for work in Indo-China makes the transfer of the contract subject to the consent of the worker and the authorisation of the representative of the administration

In *New Caledonia* the regulations concerning immigrant Native labourers state that a worker may not be transferred to another employer except with the consent of the employer and the worker concerned, which must be endorsed on the contract and entered in the worker's work-book

In the *Netherlands Indies*, although there are no definite legal provisions concerning the transfer of contracts it may be taken as a general principle of the local legislation that a contract of employment, whether in writing or not, cannot be transferred from one employer to another except with the consent of the worker concerned, however, any contract of employment involving penal sanctions remains in force for the agreed period even if the undertaking in which the worker is employed passes into other hands (section 10 of the Coolies Ordinance of 1931-1936) The new employer must notify the competent official of the change in the ownership of the undertaking within seven days indicating his name and address

In *Dutch Guiana* the transfer of contracts of employment is regulated in principle by the provisions of the Civil Code concerning contracts According to these provisions the consent of the worker is required before he can be taken over by a new employer In the case of Javanese workers, however, brought to the colony under long-term contracts the transfer is regulated by special provisions It will be remembered that the Javanese are engaged by the administrative authorities themselves and are distributed on arrival over the various plantations accord-

ing to the applications for labour The contract of engagement contains a clause authorising the administrative authorities to transfer the worker to a private employer In Paramaribo the transfer is made by or in the presence of the Chief Protector of Immigrants, in Nickerie, which is the other port of disembarkation, the transfer is made by or in the presence of the District Commissioner The officers are required by law to do all they can to meet the desires of workers to be sent in a group to the same plantation Once they have been allocated to a given employer the workers cannot as a general rule be transferred to another employer or employed even temporarily on another plantation belonging to the same employer, except with their own consent and with the approval of the Governor In certain cases, however, their consent is not necessary, for instance, when a plantation employing immigrants changes hands the new proprietor automatically replaces his predecessor as employer, subject to the approval of the Governor Immigrants who are withdrawn by a decision of a court of law from the undertaking to which they were originally allocated before completing their period of service as prescribed in their contract, may be transferred to another employer for the remainder of the period In this case the consent of the workers is not necessary but the authorities must take account of their desires as far as possible

The *Portuguese* Native Labour Code provides that workers who have been engaged may not be transferred to anyone else by their employer unless the contract was concluded on behalf of a recruiting or emigration company In this case the company may transfer the workers once only the transfer being endorsed on the contract by the representative or agent-general of the company

In the event of the death of an employer or a change in the ownership of an agricultural, commercial or industrial establishment, the transfer of the workers may be authorised if the heir or purchaser assumes full responsibility for compliance with the contracts of employment concluded by his predecessor

The Code makes it compulsory for employers not to alienate to other persons rights conferred on them by contracts concluded with workers unless they have the consent of the latter and the permission of the curator or his agents If the curator of his agents decide to cancel contracts of employment on account of offences committed by the employer, the workers may be transferred to other employers or to the Government service pending the repatriation of the other Natives engaged for the same period at the same agency

§ 2 — Conclusions

The Committee of Experts on Native Labour suggested a few simple rules concerning the transfer of contracts no written contract of employment should be transferred from one employer to another without the consent of the worker concerned, this consent should be endorsed on the contract by a public officer duly accredited by the competent authority, the transfer should be subject to the same essential guarantees as the conclusion of the contract

A change in the identity of one of the parties to an indigenous labour contract (i e the employer), or in the place of employment, is a change in the essential conditions of the contract, and it would seem to be as indispensable to require the free consent of the worker to such change as it is to require that he should be a freely consenting party to the original contract

The main purpose of the intervention of a public officer when any contract is transferred is to ensure that the worker has given his consent Certain local laws seem to go even further and make the approval of the transfer by the officer an essential condition for the operation It does not, however, seem necessary to consult Governments as to the desirability of administrative supervision beyond that laid down for the conclusion of the contract, according to the principle approved by the Committee of Experts, the duty of this officer in the case of the original contract is to ensure that the worker has given his consent to the terms of the contract without coercion or undue influence and that certain other fundamental conditions are fulfilled Nor does it appear necessary to ask Governments to indicate any conditions, other than the worker's consent, the fulfilment of which should in their opinion be verified as an indispensable measure when a contract is transferred The Office therefore suggests merely that Governments should be asked to express their views as to the desirability of laying down in the proposed international regulations the rule that the transfer of contracts should be governed by the same essential guarantees as the conclusion of the contract in the first instance

CHAPTER IX

TERMINATION OF CONTRACTS

The termination of a contract before its normal date of expiry for imperative reasons, such as the bankruptcy of the employer or the death of the worker, is generally provided for in the laws of the different territories which prescribe measures to protect the interests of both the parties concerned

But the problem of the termination of contracts has another aspect which is more important from the point of view of the protection of the Native worker, namely, that of the possibility that may be granted to the worker in certain circumstances to claim the termination of his contract before it is due to expire The provision of such a possibility may do much to attenuate one of the most burdensome features of long-term contracts, and if the worker knows that in certain circumstances he cannot be compelled to continue his contract service to the end, he may have less hesitation in accepting an engagement for a comparatively long period Liberal provisions concerning the termination of contracts may thus be in the interest both of the employer and of the worker

§ 1 — Law and Practice

Under the legislation of the *Belgian Congo* a contract of employment may be terminated in one of four ways

(1) By giving notice When the length of the engagement is not fixed either by the terms of the agreement or by the nature of the work or by custom, either party is entitled to terminate the contract by giving due notice In doing so, the period of notice laid down in the agreement must be observed, if the agreement contains no clause on this point, the period is fixed by custom but may not exceed one month, failing a stipulation in the contract or custom, the period of notice is fifteen days These rules naturally do not apply when the contract is concluded for a given period, say three years If the contract specifies the length of the period of notice, the parties must obviously adhere to it If the contract does not permit the parties to terminate it and if there is

no custom in the matter, it is impossible to give notice, the contract must be carried out until it expires unless both parties agree to terminate it

(2) By agreement between the parties In accordance with the general rules governing contracts the parties may at any time agree to terminate their mutual obligations They may simply bring the contract to an end, or they may decide that one of the parties will pay compensation to the other for breach of contract

(3) Through the inability of one party to carry out the contract In accordance with the principles of civil law, when a contract involving mutual obligations has been concluded and some accidental cause makes it impossible for one of the parties to comply with his obligations, the other party is released from his obligations and the contract expires For example, if a worker is ill for a long time, the courts recognise that it is impossible for him to fulfil the contract and consider it as automatically broken The employer is not obliged to re-engage the worker when he has recovered This case and cases arising out of the bankruptcy of the head of the undertaking or the death of one of the contracting parties are regulated in the Congo by analogy with Belgian civil law, there being no provision on the subject in the legislation of the Colony

(4) The colonial legislation does, however mention certain cases in which one of the parties is entitled to break the contract immediately The employer may break the contract without notice when the worker grossly fails to fulfil his obligations under the contract or is guilty of a serious offence, such as (*a*) an act of dishonesty, assault or serious wrong done to his employer or to a member of the staff, (*b*) material injury caused intentionally during or in connection with the execution of the contract, (*c*) immoral acts committed during the execution of the contract, (*d*) imprudence endangering the safety of the undertaking, the work or the staff

The worker, on his side may break the contract without notice before it is due to expire if the employer grossly fails to fulfil his obligations under contract or is guilty of a serious offence against the worker such as (*a*) an act of dishonesty assault or serious wrong, (*b*) material injury caused intentionally during or in connection with the execution of the contract The worker may also break his contract without notice if his safety or health are gravely endangered during the execution of the contract in a way which he could not foresee when he accepted the contract, or if his moral welfare is endangered

It should be noted that the enumeration of the serious offences mentioned above is by no means restrictive, but is merely intended to indicate certain examples In cases of this kind the contract may be broken at once without any recourse to a court of law and without any notice

In the territories administered by *Great Britain* and the *Dominions* the following legislative provisions govern the termination of contracts

The provincial Masters and Servants laws in the *Union of South Africa* specify a number of cases in which the contract may be terminated before its normal expiration

In the Cape Province the contract is automatically terminated by the death or insolvency of the employer provided that the widow of a deceased employer may continue the contract of an agricultural or domestic servant and by the death of the worker in respect of any contract of his widow or children for service with the employer It may

be terminated at the option of the worker when the employer changes his residence and the contract is for service at a particular place, and at the option of the husband when a female servant is married during the contract At the employer's option the contract may be terminated should a female resident servant marry, should any female servant become unfit for work by reason of pregnancy or child delivery, or for any servant in the event of incapacity for more than two months Certain powers are also reserved to the Courts No fine or imprisonment imposed upon a worker has the effect of cancelling a contract but, at the request of an employer, the Court may order the cancellation of the contract of a convicted servant and at the request of the servant may so decide when a groundless accusation has been brought by the employer, when the employer has not fairly and faithfully performed his part of the contract or when the employer is convicted of assault on the worker

The above provisions of the Cape law have been extended to or closely copied in the Transvaal, the *Mandated Territory of South West Africa*, the *South African territories under British administration* and *Southern* and *Northern Rhodesia*, while in Natal and the Orange Free State the provisions are repeated concerning cancellation by the Court in the event of a conviction of the servant, assault by the employer or failure to perform the contract

In addition, in the *Union of South Africa*, the contracts of recruited workers may be cancelled by the competent authorities when the Native is apparently under the age of 18 years or is a prohibited immigrant or is incapable of performing his service owing to physical or mental infirmity, or when the employer is unable to pay the wages due or about to become due or fails to furnish the worker with regular employment or has brought an unfounded or frivolous charge against the worker or, lastly, has been convicted of assault on him

Special provisions permit the cancellation of a labour tenant contract under the South African Native Service Contract Act When the contract does not define the particular period of the year during which the Native is to render service to his employer, the employer may regard the contract as terminated if for more than three months he has been precluded from calling upon the Native by reason of the Native's absence without permission Secondly, whenever two or more Natives belonging to the same kraal or household are bound under any labour tenant contract, the failure of any one Native to fulfil any of his obligations entitling the employer to terminate the contract as against that one Native entitles the employer to terminate the contract as against all such Natives or any of them

In *Southern Rhodesia*, in addition to the provisions mentioned above regulations empower a magistrate to cancel a contract owing to the physical or mental infirmity of the worker, the inability of the employer to pay wages, his failure or inability to furnish regular employment, the bringing of an unfounded or frivolous charge against the worker or the employer's conviction of assault or failure to carry out his obligations under the contract

In *Northern Rhodesia*, in addition to the provisions mentioned above, the Courts are empowered on any complaint under the law to rescind the contract on such terms as are thought fit in regard to the payment of wages, damages and other sums due

This provision is also to be found in *British Somaliland*, *Kenya*, *Uganda* and the *Mandated Territory of Tanganyika* In *Nyasaland*, in the event

of any worker being convicted of a labour offence, his contract may, upon the application of his employer, be cancelled by the Court

For resident Native labourers in Kenya the labour agreement provides that with the consent of a magistrate the agreement may be terminated by the employer or Native giving to the other six months' notice The conditions are laid down that the Native shall suffer no prejudice in regard to the care and reaping of his crops or the removal of his family or stock and that the employer may demand the fulfilment by the Native of any labour obligations The employer may terminate the agreement on the conviction of the Native by the Courts

In the *British West African dependencies*, as in East and Central Africa, the Courts may rescind the contract In addition provision is made for administrative cancellation When it is proved to the satisfaction of a local officer that any employer or his agent has been guilty of serious negligence or ill-treatment of any labourer under contract the case is reported to the Governor, who may cancel the contract

In *Hong Kong* the only method of terminating a written contract expressly mentioned in the legislation is the summary dismissal of the worker by the employer for some valid reason

In the *Pacific dependencies* the laws usually provide for the cancellation of a contract by mutual consent and by Government decision In the *British Solomon Islands*, the cancellation of a contract may at any time be effected by mutual consent before a local or labour officer, while the Resident Commissioner may at any time cancel the contract for any reason which may seem good to him Provision is also made for the cancellation of a contract in the event of the worker's physical unfitness In the *Gilbert and Ellice Islands* the provisions are similar except that the cancellation by Government action is dependent upon the facts elicited in a court of law It is laid down that when it appears from such enquiry that owing to the neglect or ill-treatment of any labourers under contract or for any good cause it is undesirable that they should remain under contract, the contract may be suspended pending report to the Resident Commissioner, who may either cancel the contract or renew it on such terms as he sees fit Any labourer who is physically unfit for service or against whom malingering or incurable laziness has been proved may have his contract cancelled Thirdly, the cancellation of a contract may at any time be effected by mutual consent before a Government officer In the *New Hebrides* the Resident Commissioner may cancel the engagement of any Native employed by a British subject in case it shall appear that he has been ill-treated by his employer or in case of any neglect of duty or breach of contract on the part of the employer or in case the lodging or food provided is bad or insufficient or on any other ground upon which the Resident Commissioner may consider it necessary or expedient to do so

In the *Fiji Islands* the Masters and Servants Ordinance of 1890 empowers the District Commissioner to cancel a contract in the following cases (1) if the master has been guilty of maltreating the worker or has neglected his duty of providing the worker with suitable food and accommodation, (2) if the worker has been guilty of a serious offence or of theft from his employer, or has failed or refused to perform his duties According to the Labour Ordinance of 1895, the contracts of indigenous workers employed on plantations may be cancelled (1) by mutual agreement in the presence of the competent administrative officer; (2) in the case of the physical unfitness of the worker, again

before the competent authority, (3) by decision of the Governor for any reason considered valid by him, (4) by decision of the competent authority if the employer maltreats his workers or fails to fulfil his obligations In this last case it is not only the worker who has a definite grievance against his employer but all the other indigenous workers employed on the same plantation who may be released from their contract Until a decision is given on the point the contract may remain in suspense, if, when the period of suspension expires, the contract is not cancelled, it may be prolonged in such manner as the Governor considers necessary

The laws in *New Guinea under Australian Mandate* and *Papua* are particularly precise on the subject of cancellation In New Guinea the local officer may cancel a contract if the worker is convicted of a crime or offence, if he creates or fosters a bad influence among his fellow-workers or damages or endangers the interests of his employer by disobedience or by the serious and deliberate neglect of duty or in any other way, in the event of the worker's unfitness, if the employer or his wife or family has assaulted the worker, if the employer is convicted of any breach of the ordinance or if the labourer voluntarily agrees with the employer that the contract be cancelled Moreover, a local officer may for any reason that he thinks fit call upon an employer to show cause why a contract should not be cancelled and may cancel the contract in the absence of sufficient cause, and the administrator may on any grounds that appear sufficient cancel any contract In Papua a contract may be cancelled by a magistrate after enquiry or after the dismissal of any complaint made by an employer against a Native or after the conviction of an employer or his European employee for a labour offence or assault or on the complaint of any of the parties concerned It is laid down that a sufficient ground for cancellation is the incompetency and inefficiency of the worker or the fact that he is creating or fostering a bad influence among his fellow-workers or is damaging or endangering his employer's interests by disobedience to orders or by the serious and deliberate neglect of duty or in any other way With the consent of the parties concerned a magistrate may at any time vary the terms of a contract

In *British Guiana* and in *British Honduras* the Courts may cancel the contract in the event of complaint by employer or worker Similar provisions exist in the *West Indian dependencies*

The texts dealing with contracts in the *French Colonies* prescribe various grounds for the termination of contracts

(1) Termination by agreement and the mutual consent of the two parties is mentioned in all the legislations except that of *French Equatorial Africa*

(2) The texts also mention, in different terms, the possibility of termination because of the illness of the worker The legislations of *French Equatorial Africa* and of *Indo-China* provide for the event of a worker proving to be physically unfit for his work before he actually begins it, in this case the contract is automatically cancelled and the worker must be repatriated at his employer's expense The case of workers who fall ill during the execution of the contract is dealt with differently by the various legislations, but they agree in accepting the general principle that the employer must care for the worker during a certain prescribed period and that it is only when this period expires that the contract may, subject to certain reservations, be terminated

(4) The various local laws also provide for certain cases which may be summed up as follows the termination of a contract may be permitted when it has become morally or materially impossible for one of the parties to carry out his obligations under the contract In the French colonies in Africa, the decision in cases of this kind is left to the arbitration boards The regulations for *Indo-China* state that the contract may be terminated " (4) at the request of one of the parties when it is duly proved to be impossible for the other party to fulfil the contract, (6) at the request of the employer in cases, duly confirmed by the factory inspector, of bad conduct, breaches of discipline, malingering, or actions likely to cause trouble in the undertaking, (7) at the request of the employer when the worker has been sentenced for a misdemeanour or for an offence against the labour regulations, (8) at the request of either party for a legally valid reason " In *New Caledonia* the regulations concerning immigrant workers provide for the termination of the contract if the worker stirs up trouble in the undertaking, or if the employer is guilty of assaulting the worker In the *French Establishments in Oceania*, the regulations concerning immigrant workers mention as a possible cause of termination " maltreatment by the employer or gross failure to fulfil his obligations ", the regulations concerning non-immigrant workers permit the termination of contracts of employment with French subjects " (4) at the request of one of the parties when it is duly proved to be impossible for the other party to fulfil the contract, (6) at the request of the employer in cases, duly confirmed by the factory inspector, of bad conduct or actions likely to cause trouble in the undertaking, (7) at the request of the employer when the worker has been sentenced for misdemeanour or for an offence against the labour regulations "

(5) Certain local regulations also provide another possibility of terminating contracts The right is given to either party to withdraw from the contract without any special reason mentioned in the legislation, but simply on giving notice and, possibly, paying compensation This clause does not occur in the legislation of the French colonies in Africa It is to be found however in the regulations for *Indo-China* in the following form a worker who has signed a contract for two years or longer may terminate it after eighteen months' service, on giving three months' notice and refunding the advances received and the cost of recruiting and transport A worker who terminates his contract in this way retains his right to repatriation Immigrant Javanese workers in *Indo-China* may terminate their contracts after a year's service, on giving three months' notice and refunding all the advances, together with compensation to the amount of 50 piastres, they also retain their right to repatriation In *New Caledonia* the recent legislation concerning immigrant workers (Decree of 24 December 1935) makes no provision for the termination of contracts in this way, but the special standard contracts for immigrant Javanese workers, which have presumably remained in force, permit the worker to terminate his contract at the end of three years and to retain his right to free repatriation In the *French Establishments in Oceania*, the special regulations concerning immigrant workers grant a worker the right to terminate his contract on giving three months' notice and paying to his employer a reasonable amount of compensation fixed by the local magistrate An immigrant who is thus released is not permitted to accept fresh employment, if he is repatriated, it is at the expense of his last employer In the case of non-immigrant labour, the regulations grant a worker who has signed

a contract for two years or longer the right to withdraw from it after eighteen months' service, on giving three months' notice and refunding the advances made to him

In the *Italian Colonies*, the termination of employment is regulated as follows In *Eritrea* the only legal provisions on this subject are contained in the Decree of 1 September 1916 concerning domestic servants and workers employed in commercial, industrial and other undertakings According to that Decree the contract comes to an end when the date of expiry is reached, provided that one of the parties gives notice of termination not less than seven days in advance If this is not done the contract is considered as being tacitly renewed In the case of domestic servants the Decree mentions the possibility of terminating the contract for valid reasons, it is to be presumed that the same right is granted to the other categories of workers covered by the text One condition of termination specifically mentioned in the case of workers in commercial, industrial and other undertakings is the closing of the establishment or workshop and the cessation or suspension of work for reasons of *force majeure* In this latter case the contract automatically comes to an end and the worker can claim wages only for the days he has actually worked

There was presumably no intention of enumerating in this Decree all the possible means of terminating a contract, the legislative authorities probably wished merely to emphasise certain of these methods, the others being covered by the general principles of law It may therefore be presumed that a contract can be terminated by mutual agreement between the parties

Similar provisions probably apply to workers in Eritrea who are not covered by the Decree of 1916 and to workers in *Somaliland*, where the law makes no mention of the possibility of terminating contracts

In the *Netherlands Indies* the various methods of terminating a contract of employment are regulated by the special rules governing the different types of contract used in that colony

Contracts of employment with no penal sanctions are governed in the first instance by the three sections concerning the engagement of domestic servants and workers which were formerly included in the Civil Code but which now apply only to non-European workers One of these sections deals with the termination of contracts It applies only to contracts for a fixed period and provides that such a contract comes to an end when the prescribed period expires In addition, either party may terminate the contract for legally valid reasons An employer is further permitted to dismiss a worker at any time without stating his reasons, provided that he pays him the wages due and damages equal to six weeks' wages If the contract is for a period of less than six weeks, or if less than six weeks have still to run, the worker is entitled to his full wages A worker who deserts his employment before his contract expires loses his right to the wages still due to him

The termination of a contract without penal sanctions concluded for an indefinite period is regulated by custom

Among contracts without penal sanctions those for migrant workers employed as " free " workers in the Outer Provinces constitute a category by themselves They are regulated not only by the sections concerning the employment of domestic servants and workers but also by the Ordinance of 3 October 1911 Although this latter text does not contain special provisions concerning the termination of contracts it

may be concluded that the physical unfitness of the worker brings his contract to an end

The main legislation concerning the termination of a contract under penal sanctions is the Coolie Ordinance of 1931-1936 That Ordinance deals first of all with certain forms of termination which come under administrative law rather than under civil law and which apply to the contracts of all the workers on a plantation simultaneously For example, a contract is deemed to be terminated when the undertaking passes into the hands of a new employer who cannot be accepted as an employer for the purposes of the Coolie Ordinance The Governor-General may also cancel the contracts of all the workers employed under penal sanctions in an undertaking if the employer does not fulfil the regulations concerning the gradual elimination of workers employed under penal sanctions The same text also provides for the cancellation by the Governor-General of the contracts of all the workers employed under penal sanctions in an undertaking if they are grossly maltreated

With regard to individual contracts, the Coolie Ordinance provides for termination in the following cases (1) normal expiration, (2) the death of the worker, (3) cancellation of a contract by the competent labour inspector or administrative official for serious or urgent reasons of the kind specified in sections 1603 *o*, 1603 *p* and 1603 *v* of the Civil Code of the Netherlands Indies Either the employer or the worker can apply for cancellation Urgent reasons from the employer's point of view are taken to be such acts or defects of character on the worker's part as make it unreasonable to require the employer to retain him in his service Urgent reasons from the worker's point of view are taken to mean circumstances such that the worker cannot reasonably be required to remain in the employer's service Serious reasons are taken to mean the urgent reasons mentioned above and in addition any change in the personal or financial situation of one of the parties or in conditions of employment which make it desirable for the worker's services to come to an end immediately or within a very short period

The regulations concerning Chinese labour in the tin mines of Banka and Billiton contain provisions similar to those of the Coolie Ordinance

Neither the Coolie Ordinance nor any of the regulations mentioned above provides for a contract being terminated by mutual agreement between the parties In the case of a contract without penal sanctions the possibility of termination in this way would seem to follow from the nature of the contract When a contract is subject to penal sanctions there is more room for doubt on this point, because the law considers such contracts as being more or less public law contracts Nevertheless, during the early years of the depression, from 1929 to 1935, when there was a large surplus of workers, contracts with penal sanctions were terminated by mutual agreement on a large scale under the supervision of the labour inspectors or administrative officials

In the case of workers engaged for employment abroad the rules governing the termination of contracts are generally left to the legislation of the country of employment The latest standard contract drawn up by the Governor-General for the engagement of workers for New Caledonia, however, contains more or less definite provisions on this subject A contract comes to an end (1) when it normally expires, (2) when the worker dies, (3) by mutual agreement, (4) when the worker is permanently incapacitated Moreover, a contract, even if concluded for a period of five years, may be terminated after three years at the worker's request for important family or health reasons Finally, if

a worker's children are also engaged under contract they may leave their employment at any time in order to return to Java with their parents

In *Dutch Guiana* the termination of contracts of employment is governed in principle by the relevant provisions of the Civil Code and in particular by section 1615 concerning the employment of domestic servants and workers In the case of workers brought into the country under long-term contracts and workers employed in forestry undertakings, however, the termination of contracts is governed by special regulations concerning these categories of workers Section 1615 of the Civil Code is the same in substance as the corresponding provisions of the legislation of the Netherlands Indies analysed above and therefore need not be further mentioned

When workers are brought into the country under contract by the administrative authorities and then allocated to private employers a distinction must be made between the termination of their contract with the authorities and the cessation of their services with the employer to whom they were allocated The first necessarily implies the second, but the reverse is not the case The law expressly mentions the following cases in which a contract with the administrative authorities is considered as being terminated (1) when the agreed period of service has expired, the worker being then entitled to a certificate from the authorities noting that he has complied with his obligations, (2) when the worker is physically unfit for his employment

The worker's services with his employer may come to an end (1) by agreement between the parties, with the approval of the Governor, although it is not clear whether such an agreement also releases the immigrant from his contract with the authorities, (2) by decision of a court of law, if an employer is sentenced more than once for breach of contract or of his legal obligations or for maltreating his workers, the Court may cancel the contracts of all immigrants in his service These immigrants are then transferred to another employer for the remainder of their period of engagement with the administrative authorities

Under the Labour Ordinance of 1911 the contracts of workers employed in forestry undertakings come to an end either when the agreed period of service expires or when the worker dies In addition, either party may terminate the contract at any time without giving notice if there is an urgent reason for doing so and if this reason is immediately communicated to the other party The definition of urgent reasons in the Ordinance is identical with that mentioned above in connection with the Coolie Ordinance of the Netherlands Indies of 1931-1936 It is also permissible for the parties to agree that they may terminate the contract at any time without giving an urgent reason, and in this case provision may or may not be made for the payment of damages, but an agreement whereby only one of the parties can terminate the contract without an urgent reason and without paying damages is considered void If the employer becomes bankrupt the receiver dealing with the liquidation of the estate and the worker may terminate the latter's contract by giving fifteen days' notice If the employer dies, his heirs enjoy the same right, but on the other hand the worker cannot give notice in such circumstances unless he refunds any sums due by him to the employer If a worker is tacitly re-engaged by continuing to work after his original contract has expired the parties may terminate the contract on giving fifteen days' notice

In the *Portuguese Colonies* the Curator or one of his representatives may cancel a written contract, without prejudice to any penalties that may be imposed on an employer for offences he may have committed A Curator is entitled to cancel a contract, for instance, when he has reasons to suspect that the employer will take reprisals against workers who have lodged a complaint concerning the employer or one of his subordinates In such a case the authorities must have the worker immediately repatriated

§ 2 — Conclusions

There are three main problems for the Conference to consider in connection with the termination of contracts (1) in what cases should termination be permitted, (2) by whom should contracts be terminated, (3) how should the rights of workers be protected when their contracts are terminated ?

The laws analysed above give very different solutions to the first of these questions Not only do the cases in which termination is provided for vary considerably from one territory to another, but the manner in which provision is made for termination varies sometimes the reasons for which a contract may be terminated are laid down in the contract of employment itself, in other cases they are enumerated in the labour regulations, and in yet other cases they are determined by the general provisions of the civil law

The cases in which contracts may be terminated under the various colonial legislations may be classified as follows

(*a*) There is first of all termination by mutual agreement between the parties Express provision is made for this in the regulations of many territories (e g those of all the French possessions with the exception of French Equatorial Africa) When the legislation is silent on the point, the possibility of bilateral termination can generally be deduced from the general principles of law, according to which parties who have accepted mutual obligations may always by agreement put an end to these obligations Reference was made above to the situation in the Netherlands Indies, where the legislation concerning penal sanction contracts makes no provision for termination by mutual agreement, but where this method of termination was frequently practised from 1929 to 1935, with the approval of the competent authorities

(*b*) The second case is the inability of one of the parties, for a major reason, to fulfil his obligations under the contract The cause may be the death of one party, or, on the employer's

a worker's children are also engaged under contract they may leave their employment at any time in order to return to Java with their parents

In *Dutch Guiana* the termination of contracts of employment is governed in principle by the relevant provisions of the Civil Code and in particular by section 1615 concerning the employment of domestic servants and workers In the case of workers brought into the country under long-term contracts and workers employed in forestry undertakings, however, the termination of contracts is governed by special regulations concerning these categories of workers Section 1615 of the Civil Code is the same in substance as the corresponding provisions of the legislation of the Netherlands Indies analysed above and therefore need not be further mentioned

When workers are brought into the country under contract by the administrative authorities and then allocated to private employers a distinction must be made between the termination of their contract with the authorities and the cessation of their services with the employer to whom they were allocated The first necessarily implies the second, but the reverse is not the case The law expressly mentions the following cases in which a contract with the administrative authorities is considered as being terminated (1) when the agreed period of service has expired, the worker being then entitled to a certificate from the authorities noting that he has complied with his obligations, (2) when the worker is physically unfit for his employment

The worker's services with his employer may come to an end (1) by agreement between the parties, with the approval of the Governor, although it is not clear whether such an agreement also releases the immigrant from his contract with the authorities, (2) by decision of a court of law if an employer is sentenced more than once for breach of contract or of his legal obligations or for maltreating his workers, the Court may cancel the contracts of all immigrants in his service These immigrants are then transferred to another employer for the remainder of their period of engagement with the administrative authorities

Under the Labour Ordinance of 1911 the contracts of workers employed in forestry undertakings come to an end either when the agreed period of service expires or when the worker dies In addition, either party may terminate the contract at any time without giving notice if there is an urgent reason for doing so and if this reason is immediately communicated to the other party The definition of urgent reasons in the Ordinance is identical with that mentioned above in connection with the Coolie Ordinance of the Netherlands Indies of 1931-1936 It is also permissible for the parties to agree that they may terminate the contract at any time without giving an urgent reason, and in this case provision may or may not be made for the payment of damages, but an agreement whereby only one of the parties can terminate the contract without an urgent reason and without paying damages is considered void If the employer becomes bankrupt the receiver dealing with the liquidation of the estate and the worker may terminate the latter's contract by giving fifteen days' notice If the employer dies, his heirs enjoy the same right, but on the other hand the worker cannot give notice in such circumstances unless he refunds any sums due by him to the employer If a worker is tacitly re-engaged by continuing to work after his original contract has expired the parties may terminate the contract on giving fifteen days' notice

In the *Portuguese Colonies* the Curator or one of his representatives may cancel a written contract, without prejudice to any penalties that may be imposed on an employer for offences he may have committed A Curator is entitled to cancel a contract, for instance, when he has reasons to suspect that the employer will take reprisals against workers who have lodged a complaint concerning the employer or one of his subordinates In such a case the authorities must have the worker immediately repatriated

§ 2 — Conclusions

There are three main problems for the Conference to consider in connection with the termination of contracts (1) in what cases should termination be permitted, (2) by whom should contracts be terminated, (3) how should the rights of workers be protected when their contracts are terminated ?

The laws analysed above give very different solutions to the first of these questions Not only do the cases in which termination is provided for vary considerably from one territory to another, but the manner in which provision is made for termination varies sometimes the reasons for which a contract may be terminated are laid down in the contract of employment itself, in other cases they are enumerated in the labour regulations, and in yet other cases they are determined by the general provisions of the civil law

The cases in which contracts may be terminated under the various colonial legislations may be classified as follows

(*a*) There is first of all termination by mutual agreement between the parties Express provision is made for this in the regulations of many territories (e g those of all the French possessions with the exception of French Equatorial Africa) When the legislation is silent on the point, the possibility of bilateral termination can generally be deduced from the general principles of law, according to which parties who have accepted mutual obligations may always by agreement put an end to these obligations Reference was made above to the situation in the Netherlands Indies, where the legislation concerning penal sanction contracts makes no provision for termination by mutual agreement, but where this method of termination was frequently practised from 1929 to 1935, with the approval of the competent authorities

(*b*) The second case is the inability of one of the parties, for a major reason, to fulfil his obligations under the contract The cause may be the death of one party, or, on the employer's

side, the bankruptcy of the undertaking or the winding up of the business, or, on the worker's side, incurable physical unfitness or a prolonged illness In cases of this kind it is obvious that the contract must be terminable The only question that arises is how the legitimate rights of the party who is deprived of his contract as a result of the failure of the other party to fulfil his obligations are to be guaranteed

(*c*) The third case is the inability of one of the parties to fulfil his obligations under the contract, not because of some material and imperative circumstance, but (1) as a result of an important change in the conditions of the contract (marriage of the worker or change of residence of the employer), (2) as a result of the immoral conduct of one of the parties (conviction by a court of law, maltreatment of the worker, or systematic failure by one party to comply with his obligations), (3) for some other reason laid down in the legislation as involving the cancellation of the contract (such as the employment of a worker below the legal age, an irregularity in the situation of a migrant worker, etc) Cases of this type are dealt with in very different ways in the various national legislations

(*d*) The fourth case is an application by one of the parties to terminate the contract, not because of the inability of the other party to fulfil it, but for some personal motive of the applicant. This form of termination is mentioned in only very few legislations the special regulations for the French colonies in Asia and in the Pacific and the Coolie Ordinance of the Netherlands Indies The regulations for Indo-China permit a worker who has signed a contract for two years or longer to terminate it after eighteen months' service on giving three months' notice and refunding any advances received and the cost of recruiting and transport, a worker who terminates his contract in this way retains his right to repatriation In the Netherlands Indies the Coolie Ordinance of 1931-1936 empowers the competent official of the labour inspection service or of the general administration to terminate a contract on account of any change in the personal or financial situation of one of the parties or in the conditions of employment which makes it desirable for the worker's services to come to an end immediately or at an early date

The Committee of Experts on Native Labour dealt with the termination of contracts, in its conclusions, in the following terms

" (1) *The termination of written contracts of employment otherwise than at the expiry of the period of service stipulated in the contract*

should only be permitted in the cases and under the conditions prescribed in the law or regulations and with the approval of the competent authorities in each particular case

" (2) *Where a contract is so terminated by reason of the inability of the employer to fulfil the contract, the competent authorities should ensure that the worker does not suffer loss of wages earned or deferred pay, or of his right to repatriation*

" (3) *Where a contract is so terminated owing to sickness or accident rendering the worker unable to fulfil the contract, the worker should not be liable to loss of wages earned or deferred pay, or of his right to repatriation*

" (4) *Where a contract is so terminated by mutual agreement between the parties the competent authorities should ensure that the agreement is voluntary on both sides, that all monetary liabilities have been settled, and that the worker does not lose his right to repatriation, unless the agreement otherwise provides*

" (5) *Written contracts of employment should also be terminable, otherwise than at the expiry of the period of service stipulated in the contract, on the application of either of the parties, but only in such special circumstances and for such reasons as may be provided for in the law or regulations In such cases, the competent authorities should ensure an equitable settlement of the questions arising out of the termination of the contract, more particularly in respect of the obligation to repatriate the worker* "

As will be seen, the Committee of Experts did not attempt to draw up a standard list of cases in which contracts might be terminated, it proposed that this should be left to national legislation The laws of the different countries vary so much that there would seem to be serious difficulties in attempting to standardise them on this point Moreover, the really important point for the protection of the workers is that the laws should prescribe exactly the cases in which a contract may legally be terminated and the manner in which this may be done Nevertheless, the Committee felt obliged to refer to the principal cases enumerated above, namely mutual agreement between the parties, the inability of one party to fulfil his obligations under the contract, and the application of one of the parties based on legally valid grounds Only the last of these cases would seem to call for some comment

The problem to be considered is whether a provision permitting the termination of contracts on the application of one of the parties, as it exists in the regulations of Indo-China and the Netherlands Indies, is one that is suitable only in very exceptional cases, or is one that might prove an important factor in the solution of the problem of long-term contracts, and as such is worthy of the careful and sympathetic attention of colonial Governments, even if it could not be generally applied at once There can be no doubt that the

impossibility for the worker to liberate himself from his obligations under a long-term contract gives to the contract, almost as much as do the penal sanctions, the character of an instrument restrictive of personal liberty Moreover, the most serious offence for which penal sanctions may be imposed—namely, desertion on the part of the worker—probably occurs in the majority of cases simply because the worker has no lawful means of terminating his contract No provisions permitting the unilateral termination of contracts exist in the laws of African territories, possibly because it is not considered that the Native communities in Africa have reached a sufficiently advanced stage of development It is, however, noteworthy that in one country in Africa, where the degree of development is not particularly advanced—namely, the Belgian Congo—the suggestion has recently been made by an acknowledged authority that the provision in question should be introduced in the legislation In his report on an enquiry carried out in the Eastern Province of the Belgian Congo, Colonel Bertrand proposed that the labour legislation should be supplemented by inserting a clause in long-term contracts providing for termination by either party on giving due notice "The most valuable form of protection", he said, "that can be given to the Native worker who is discontented with the system under which he works is the possibility of returning home or seeking another employer "

The Committee of Experts considered that a provision permitting the termination of contracts on the application of one party might usefully be included in the international regulations, but it added that such termination should be possible "only in such special circumstances and for such reasons as may be provided for in the law or regulations" The Committee was of opinion that the privilege of terminating a contract unilaterally could not be granted under all circumstances and that the circumstances in which it might be granted should be laid down in national laws and regulations The Office therefore proposes that the Governments should be consulted on the general principle of termination on the application of one party, while leaving the definition of the grounds on which this might be permitted in any particular case to the law and regulations of the territories concerned

The second general question arising in connection with the termination of contracts is by whom can the decision to terminate a contract be taken ? Here again there is very great diversity between the national laws In some cases the right of termination

is granted to the contracting parties, who may either give notice to each other of their intention to terminate the contract or notify the appropriate official, in other cases the right of termination is in the hands of special labour authorities (the arbitration boards in certain French colonies, and the Curator or his representative in the Portuguese colonies), in others an official of the general administration has the power to terminate contracts, sometimes on his own initiative and sometimes only after a judicial enquiry, in yet other cases, contracts may be terminated only by the law courts

In view of these divergent practices, the Conference will doubtless consider it desirable to consult Governments as to the adoption of a very general formula It would be undesirable to attempt to introduce provisions which might clash with traditional legal forms and local usages It would be sufficient to lay down the rule that, in view of the importance of the termination of contracts, each individual case should be subject to the approval and supervision of the competent authority in such form as may be prescribed by national laws and regulations The words " competent authority " should here be understood to mean whatever authority—administrative or judicial—is competent under the existing constitutional system in any territory[1]

The third general question connected with the termination of contracts is how can the rights of the two parties be protected when the contract is terminated ? The Committee of Experts considered that, when the party unable to fulfil the contract is the employer, steps must be taken to ensure that the worker does not suffer a loss of wages earned or of deferred pay, or of his right to repatriation The principle laid down by the Committee on this point emphasises that, when the employer is unable to pay the wages due to the worker, the administrative authorities should do so in his place, and should ensure the repatriation of the worker If the inability to fulfil the contract is on the worker's side, and is due to an accident or illness, the termination of the contract

---

[1] Two members of the Committee of Experts were unable to accept the Committee's recommendation providing for the permission or approval of the competent authorities for the termination of contracts They maintained that not only did these provisions exceed the powers of the administration in some colonies, but they appeared to be based on a misunderstanding of the principles which in some colonies determined the competence of the judiciary and the executive respectively It would seem that this objection might be overcome by a form of words based on the considerations outlined above

should not involve the loss of wages or deferred pay to which the worker is entitled or the loss of his right to repatriation

If the contract is terminated by mutual agreement between the parties, the administrative authorities would, in the view of the Committee of Experts, have a dual protective part to play On the one hand they would have to make certain that the worker consents to the termination of his own free will, and on the other they would have to ensure that the monetary liabilities of the parties are settled in a spirit of equity, and that, unless any arrangement to the contrary has been made, the worker retains his right to repatriation

Finally, in the case of termination of a contract on the application of one party, it would be necessary for the competent authorities to ensure the equitable settlement of all monetary liabilities between the parties Such a settlement would have to avoid two pitfalls· first, that the financial conditions imposed on a worker who wishes to terminate his contract are so stringent as to make termination impossible in practice, and, second, that the employer suffers undue loss by the premature termination of the contract

CHAPTER X

REPATRIATION

The return home of the workers after completing service is a question of particular importance in those territories of contract employment where the areas of labour supply are remote from the areas of employment and where the men alone go out to work The disastrous effects on indigenous communities of an excessive labour exodus may often be aggravated by the continued absence of the men after the termination of their contracts The administrations accordingly often encourage or even require workers to rejoin their communities after a certain period of absence or after the cessation of employment

The problem of the " Lost Ones "—to use the term employed by the Nyasaland Emigrant Labour Committee—arises, however, in many other cases than those of workers engaged in their territory of origin for long-term contract employment The reintegration of the worker in his home community is thus a matter of general social policy transcending the question of labour contracts Nevertheless, one of the purposes of the regulation of labour contracts is to enable the administrations to control movements both to and from employment, and the return home of the worker is widely treated under the contract labour laws

Two questions are involved in the regulation of repatriation under a contract labour system the requirement which may be imposed on the worker to return home after the termination of his original or first re-engagement contract, the responsibility which may be imposed on the employer to provide the worker with the means of returning home The requirement that the worker should return home often forms part of rules applicable also to persons who are not in contract employment, and may figure in laws concerning immigration, passes and vagrancy only indirectly connected with the contract labour legislation The imposition of an obligation on the employer is definitely a contract

labour question, for even if not treated by law, it arises inevitably out of the terms of any contract by which the worker undertakes distant employment It is therefore the second question of the employer's obligation to bear the cost of the return journey of workers employed by him under contract, which will be chiefly emphasised in these pages

Repatriation as a question of labour contracts arises more particularly when the worker has been brought from his home village under agreement with the employer or an agent of the employer It is thus complementary to the act of recruiting, and it will be useful to preface the usual analysis of national law and practice by a summary of the terms of the Recruiting of Indigenous Workers Convention affecting the journeys of recruited workers

The Convention lays down in Article 20 that the expenses of the journey of recruited workers to the place of employment, including all expenses incurred for their protection during the journey, shall be borne by the recruiter or employer It may be remembered that this provision conforms to the generality of national laws, but that it was strenuously opposed in the Conference by South African interests as it is customary in Southern Africa for the workers, even though recruited, themselves to bear the cost of the journey to employment Article 20 also provides that recruited workers shall be furnished with everything necessary for their welfare during the journey, it permits an exemption to the general rule in the case of workers recruited by worker-recruiters Article 21 requires the repatriation at the expense of the recruiter and employer of workers who, through medical or other reasons not attributable to their own fault, are unable to enter into the employment for which they were recruited By Article 23, the Convention requires the application of these provisions to the families of recruited workers who have been authorised to accompany the workers Mention should also be made of Article 19, which covers the conditions of the journey of recruited workers.

The extent to which the same principles are applied in national law and practice in regard to the repatriation of contract workers will appear from the following summary

§ 1 — Law and Practice

The various laws show a large measure of agreement in requiring employers to bear the cost of the repatriation of workers after

the completion of the contract when such workers have been brought to the employment by the employer or his agent An exception is to be expected in Southern Africa corresponding to the situation as regards the journey to employment of recruited workers This exception is to be found, and affects a very large number of workers employed under contract at a distance from their homes in the Union of South Africa It is to be noted, however, that there is a strong and increasing tendency in the Union to require Native workers to rejoin their communities after employment Moreover, in certain cases—notably incapacity—the employer in South Africa is required to repatriate the worker This in a sense is a more extensive obligation than the obligation to repatriate workers recruited at a distance, since it also applies to workers who have come spontaneously to employment and entered into their contracts only at the place of employment

The laws vary widely in their treatment of the conditions of repatriation In some cases no provision is made other than that of the employer's legal responsibility to return the worker, the safeguards to be taken on the journey appear to be a matter of individual appreciation and of administrative organisation rather than of legal regulation On the other hand, the laws may define in detail the methods of transport to be used and the privileges to be granted the worker during the journey In practice it would seem that, as a general rule and as a result of administrative supervision and the example of employers sensitive to their reputation, the difference in the conditions of the journey may not be great in the two cases Much individual suffering, however, may occur, particularly with workers repatriated through sickness, where the employer's obligations are vague and undefined

In the *Belgian Congo*, repatriation is of great importance in view of the distances between the areas of labour supply and demand Many workers employed at Elisabethville are engaged in the Lomami Province at a distance of some 400 miles, or in the Mandated Territory of Ruanda-Urundi at an even greater distance

The employer has accordingly been required to repatriate workers at the termination of their contracts to the place of engagement or, in the case of workers recruited by recruiters, to the place of recruiting In principle no account is taken of the worker's district of origin Should the contract be terminated by the fault of the worker, the judicial authority may decide whether the employer is relieved of the whole or part of his obligations The worker is given a month after the termination of the contract in which to apply for repatriation, the presumption apparently being that any worker remaining longer has no wish to return home, but has definitely settled in the area of employment

As regards conditions of repatriation, the employer may meet his

responsibilities by handing the worker the cost of repatriation or by paying this sum to the Labour Offices which recruit workers from a distance and undertake to repatriate them at the employer's expense In certain provinces, medical examination is compulsory before repatriation, and provision is made for the supply of medical assistance to workers unfit to reach their villages without assistance

In the territories administered by *Great Britain and the Dominions*, the obligation to repatriate workers at the conclusion of their contracts is most extensive and precise in the *Pacific dependencies*

In the *British Solomon Islands*, within 21 days after the termination of the services of a worker, and in the *Gilbert and Ellice Islands* and the *New Hebrides* as soon as possible after the expiration or cancellation of the contract, the employer is required to provide the worker and his wife and children, if accompanying him, with a return passage home In the New Hebrides it is not compulsory for the worker to accept repatriation In the other two cases the employer is required to inform the workers that it is their duty to avail themselves of the means of returning home

In *Fiji*, whenever a Fijian has been engaged to serve an employer in a district other than that in which the contract was entered into, it is an implied term of the contract that at its termination the employer shall at his own cost provide the Fijian with the means to return to the district in which the contract was entered into Repatriation is required within 14 days after the expiration of the contract, and it is the special duty of the employer to inform the labourers of the means provided for their return In respect of Fijians emigrating either as domestic servants or as members of the crew of a vessel, the intending employer or master of the vessel may be required to give security for the due return of the worker to the colony within such time as may be fixed

In the territories under Australian administration, the employer's obligations are similar In the *Mandated Territory of Nauru*, as soon after the expiration of a labourer's contract as opportunity offers, the employer is required to provide him and his wife and family with a return passage home and with proper accommodation and maintenance during such passage In *Papua* it is provided that the employer shall return the Native to his home at the expiration of his term of service without unnecessary delay In the *Mandated Territory of New Guinea* the law is detailed and requires the employer, in addition to taking all necessary steps to return the labourer home, to inform the Government officer of the action taken to this effect A Native may not without the consent of the officer decline the opportunity and means of returning home offered him

The Pacific laws regulate the conditions of repatriation by requiring a licence for ships engaged in recruiting or in the transport of Native passengers The Papuan law may be mentioned as an example of the details covered Vessels carrying Natives may be inspected by Government officers and may be declared to be unfit for the purpose It is an offence to carry Natives on vessels declared unfit or to carry more than two persons to the ton Recruiting ships are required to hold annual licences Another requirement connected with repatriation is the New Guinea provision for compulsory medical examination before the return home

In the *African dependencies* outside Southern Africa the obligation to repatriate the worker is usually imposed on the employer under foreign

contracts and whenever the worker has been brought to the place of employment

As regards foreign contracts, in the *West African dependencies* of the *Gambia Gold Coast Nigeria* and *Sierra Leone*, the employer or his agent, within 14 days after the expiration of the contract, is required to provide the worker with a return passage to the place of embarkation with proper accommodation and maintenance In *East Africa* and *Northern Rhodesia* no foreign contract may be attested unless it contains a stipulation by the employer to provide a servant with sufficient means, including food, of returning if he desires to do so at the termination of the contract to the place at which he was engaged

Secondly, in *Kenya*, the *Mandated Territory of Tanganyika*, *Uganda* and *Zanzibar*, whenever any servant has been taken to the place of employment at the expense of the employer, the employer is required at the termination of the contract otherwise than by cancellation by a magistrate owing to the worker's fault to return him to the place of engagement should he so desire In *Northern Rhodesia Nigeria* and *Sierra Leone* there is an unconditional obligation on the employer to meet the cost of returning the worker home if he has caused him to be brought to the place of employment

Mention should also be made of the *Anglo-Egyptian Sudan*, where no person may take a Sudanese servant out of the country unless he has signed an undertaking to pay the expenses of transport back to the Sudan in case of dismissal, and unless otherwise expressly stipulated, a domestic servant engaged at one place and serving his employer elsewhere is entitled to repatriation at the employer's expense

The conditions of repatriation are not usually defined in the British African dependencies In *Nigeria* and *Sierra Leone* however, repatriation consists of the provision of a return passage or fare if the worker was brought to employment by ship or railway and in other cases a subsistence allowance calculated at the rate of threepence for each eighteen miles of the journey In *Northern Rhodesia* the attesting officer may insert in the contract conditions making adequate provision for the feeding of the worker until his return to the place of engagement, and the payment of the railway fare or the transport of the worker by lorry from and to home

As already indicated in Southern Africa the legal obligations concerning recruiting do not provide that the expenses of the journey to employment shall be borne by the employer or recruiter, and the corresponding obligations concerning repatriation are similarly in contrast with the laws elsewhere The whole tendency of Native policy in Southern Africa and the effect of much of the Native legislation is, however, to require an employed Native to return to his home at the conclusion of employment The Mozambique Convention between the Governments of *Portugal* and the *Union of South Africa* contains an undertaking by the Union to regard Mozambique Natives as prohibited immigrants after they have completed their term of service The Agreement between *Nyasaland Northern Rhodesia* and *Southern Rhodesia* recommends the return of the worker within a period of two years or less The Urban Areas Act, in particular the 1937 amendment effected by the Native Laws Amendment Act, in the *Union of South Africa*, and the Native Registration Act in *Southern Rhodesia* have also the effect of directing unemployed Natives back to their homes from the urban areas of employment In the *Mandated Territory of South West Africa*, Regulations of 1935 concerning extra-territorial and Northern Natives make the

recruiter or employer responsible for the deposit of a sum of money to secure the Native's repatriation after the termination of employment Although there is thus a frequent obligation on the worker to return home after the termination of his contract, and although the employer may be invested with a certain responsibility to see that he does so, repatriation is not usually effected at the employer's expense Even the South West African Regulations which have been mentioned provide that the repatriation money to be furnished by the employer shall be a proportion of the worker's monthly wages

It is, however, frequently provided in Southern Africa, as in the rest of Africa, that the employer shall return home any worker whose contract has been cancelled owing to sickness In the *Union of South Africa*, Native labourers on mines and works whose contracts have been cancelled by reason of physical or mental infirmity are returned home by the employer if they so desire Similar provision is laid down in *Southern Rhodesia* and *Swaziland* The obligation is also specified in the laws of *Northern Rhodesia Nigeria* and *Sierra Leone*, while in the *Gold Coast*, *Nigeria* and *Sierra Leone* any labourer whose contract has been cancelled owing to the misconduct of the employer is maintained and returned home at the expense of the Government, which is entitled to recover the money from the employer

To complete the summary concerning British dependencies, it may be mentioned that in *British Honduras* and some of the *West Indian dependencies*, repatriation at the employer's expense is a compulsory condition of foreign contracts

In the *French dependencies* the laws usually provide that the cost of repatriating workers and their families at the termination of the contract shall be met by the employer

In *French Equatorial Africa* the worker is entitled to repatriation to the place of recruiting at the cost of the employer or of the last employer if successive contracts have been worked This right remains in force for one month after the termination of the contract and covers cancellation before the normal term except in case of breach of contract by the worker A worker discharged on account of illness contracted in employment is entitled in addition to rations during the return journey and half wages

There are no special provisions in the *Cameroons under French Mandate* Some of the model forms of contract, however, provide for the free transport home of the worker at the termination of a contract, as well as for the payment of ration money

In *French West Africa* the employer is responsible for the travelling expenses of the worker and his family on repatriation For this purpose he is required to deposit a guarantee at a rate fixed in each colony by the administrative authorities Repatriated workers are entitled to rations during the journey In the event of the termination of a contract before its normal expiry, the employer remains responsible unless termination has been due to the fault of a worker If, however, the cause is illness other than illness attributable to conditions of employment, it is the administration which bears the cost

In *Togoland under French Mandate*, the model forms of contract provide that if a worker is recruited at more than twenty kilometres from the place of employment, his repatriation may take the form of the payment of a travelling allowance at the rate of one franc for twenty-five kilometres The allowance is payable in the event of termination

of a contract before its normal expiry unless such termination is due to the worker's serious misconduct In cases of serious illness or accident occurring during or caused by employment, the employer is required to repatriate the worker to his village of origin

In *Madagascar* and *French Somaliland* repatriation is similarly a responsibility of the employer unless the contract is terminated owing to the fault of the worker The employer pays travelling expenses, daily rations and half wages

In *Indo-China*, the Order of 25 October 1927 states that " the employer shall be responsible for the cost of repatriation if stipulated in the contract" This text might seem to imply that repatriation is not in all cases an absolute right for the worker An Order of 21 September 1935, however, has clearly established the worker's right to repatriation and extended it to his family, while the model forms used for workers engaged for Southern Indo-China and abroad have always provided for repatriation, and the repatriation of all workers so engaged has always in practice been effected at the employer's expense Termination of the contract before its normal expiry, no matter for what cause, does not affect the situation The right to repatriation remains in force for three months, or for six months if the administration finds it necessary to require the worker's return owing to indigency or for police reasons

In *New Caledonia* and the French *Oceanic* possessions, immigrant workers and their families are entitled to repatriation at the employer's cost within six months of the termination of employment In the case of Javanese workers in New Caledonia the model form of contract, which will be summarised at greater length later, stipulates that the right to repatriation shall remain in force for one year after the termination of the last contract The employer is also responsible in New Caledonia for the repatriation expenses of labourers belonging to the indigenous peoples The administration may require their repatriation in the interests of public order even before the expiry of the contract In the French Pacific colonies the contracts of non-immigrant workers which specify repatriation require the cost to be borne by the employer

In the *Italian colonies*, provision is made in *Eritrea* requiring recruiting agents to guarantee the return home of recruited workers There are also provisions in *Eritrea* and *Somaliland* guaranteeing the repatriation of servants taken outside Africa

In the *South Sea Islands under Japanese Mandate*, the regulations concerning the mining station provide for the payment of travelling expenses to workers returning to places outside the locality of the mining station

In the *Netherlands Indies*, legal or administrative measures provide for the free repatriation of the following classes of workers in certain cases (1) workers employed in the Outer Provinces under penal sanctions, (2) " free " workers employed in the larger undertakings of the Outer Provinces, (3) workers employed in *pangiongs*, (4) workers engaged for employment abroad

As regards penal sanction workers, under the 1931-36 Coolie Ordinance the employer is required to meet the cost of repatriating the worker and his family after the termination of his employment whatever may be the cause of termination If the worker remains as a " free " labourer, his right to repatriation for himself and family subsists until one month after he has left employment Should the contract be terminated by

the death of the worker, the employer is required to repatriate the family

The worker has the right to be sent back to his place of origin, and he may require repatriation at the first possible opportunity If, however, he so wishes, and subject to the conditions of admission and residence, he may remain in the province of employment or ask for a three months' postponement of repatriation

Similar provisions apply to Chinese workers on the Banka tin mines These workers, however, are not entitled to postpone repatriation, and, if settled in Banka after a certain number of years of service, may claim repatriation at the expense of the undertaking on grounds of invalidity, etc

The regulations concerning Chinese labour employed on the Billiton tin mines limit the right to repatriation of the worker and his family to cases of the termination of the contract for serious or urgent reasons due to the fault of the employer, the death of the worker and the decision of the provincial administration requiring expulsion on grounds of public interest When these regulations were discussed in the Volksraad the Government justified the absence of a general right to repatriation by the high wages earned on the mines and stated that if the employers were made responsible they would have to prolong the period of service which at present does not exceed one year

Workers in the Outer Provinces, engaged elsewhere and employed on the larger undertakings otherwise than under penal sanctions, may claim repatriation for themselves and their families at the end of the period of contract, in cases of invalidity and on the dismissal of a worker through other than his own fault

In the *panglongs*, abuses brought to light some years ago led to local regulations which require the concessionnaires to furnish any worker who leaves his employment as a result of dismissal, illness or other valid reason, with the means of departure, including, if necessary transport to the place of engagement

In the case of contracts for employment outside the Netherlands Indies, repatriation is provided in the compulsory model contracts for Dutch Guiana and New Caledonia In Dutch Guiana the recruited worker is, with his family, entitled to free repatriation to his place of origin or last domicile on the termination of his contract of employment The right remains in force unless it has been expressly renounced As a general rule, an opportunity to return to Java is offered annually The model contract for New Caledonia requires the employer, at his own expense and at the first available opportunity, to repatriate the worker and his family after the expiry of the original or re-engagement contract, on the termination of the contract by mutual consent, on its termination by reason of the worker's invalidity or on the termination of three years of the original contract if the worker asks to return to Java for important family or health reasons The employer is required to repatriate the worker's family in the event of the worker's death Any worker, who with the consent of the authorities remains in New Caledonia as a free settler, automatically surrenders his right to free repatriation one year after settlement Should, however, his permit be withdrawn, his right to free repatriation is restored

The repatriation of Netherlands Indian workers recruited for Malaya has been covered by Malayan laws after negotiations between the Governments As, however, the maximum term of engagement is one month, it is unnecessary to analyse the provisions in this Report In North

Borneo and Sarawak long-term contracts have also been abolished, negotiations have been opened between the Governments in regard to the conditions of employment of workers from the Netherlands Indies

Detailed provisions for the protection of repatriated workers within the Netherlands Indies have been prescribed only in the case of workers employed under penal sanctions Under the Coolie Ordinance of 1931-36, the employer is responsible for the maintenance of the worker and his family after the termination of the employment until the termination of repatriation The provincial administrations are empowered further to define the conditions of repatriation and rules have been issued concerning transport and providing in some cases for the presentation of the workers before embarkation to a labour inspector with a view to the lodging of complaints

In the case of employment outside the Netherlands Indies, transport conditions are minutely regulated for workers returning from Dutch Guiana The model contracts, however, require the workers, unless indigent, to contribute towards the cost of their equipment during the voyage at the rate of 10 florins for each man, 7 5 florins for each woman, 4 florins for each child over two years of age, and 2 florins for each child under two years

In *Dutch Guiana*, in addition to the provisions concerning Javanese workers, repatriation is prescribed for workers in the forestry industries Under the 1911 Ordinance the employer is required at least once a month to offer all workers whose contracts have terminated free facilities for return to the place of engagement Workers may be required to continue in employment until repatriation is practicable

In the *Portuguese African Colonies*, the Native Labour Code provides for a general right to repatriation under all contracts and for special measures in the case of employment outside the Colony of engagement and in the case of contracts with workers from foreign territories

The general provisions lay down as one of the duties of the employer that he shall produce the worker at the office where the contract was entered into on the expiry of the contract or when the worker is dismissed before its expiry, and that he shall pay the expenses of transport and board and lodging of the worker during the journey Provision is made intended to prevent the separation of families on account of repatriation

In the case of employment outside the Colony of engagement, the contract is deemed to include a provision requiring the last employer to pay the expenses of the return journey of the worker and his family as soon as the contract is terminated If for any reason it is impossible for the last employer to effect repatriation, it is to be effected by the company which recruited the worker Repatriation must be provided within sixty days of the termination of the contract An exemption may be granted to workers with means of subsistence in the Colony of employment This exemption may be cancelled within five years in the event of vagrancy or any criminal offence committed by the worker

In the case of foreign workers employed in Portuguese Colonies, the Code requires the contracts to provide for repatriation at the employer's expense

Detailed provisions are contained in the Code concerning the transport of workers both to and from employment The expenses to be met by the employer are deemed to include boat passages, railway fares or provision for other mechanical means of transport, and board and lodging during the journey The use of ships or of the railways is compulsory

in all cases where available Rest houses are to be established at ports and other places where Natives are liable to assemble in large numbers Journeys on foot are calculated to be at the speed of 30 kilometres a day with one day's rest every 100 kilometres Parties of more than thirty workers are to be convoyed by a European or other responsible person During the days spent in travelling by land and in rest and in waiting for conveyances, workers are entitled to a money allowance equal to one-fifth of their wages, The Code contains particularly detailed provisions regarding the transport of workers by sea Save in exceptional cases, the transport is required to be effected in passenger vessels with suitable and sufficient accommodation Vessels carrying more than fifty workers for ports outside the colony of embarkation or more than one hundred workers between ports in the same colony for voyages of more than 48 hours are required to hold licences which are only issued after inspection

§ 2 — Conclusions

The Committee of Experts on Native Labour adopted the principle that every worker serving under a written contract, who has been brought to the place of employment by the employer or anyone acting on his behalf, should be repatriated without expense to the worker The South African expert, however, dissented from this principle, as he was of opinion that it would adversely affect voluntary (i e non-recruited) labour and involve a revision of wage rates in South Africa The reasons for this opinion were fully explained to the Conference in connection with the discussion of the provisions of the Recruiting of Indigenous Workers Convention requiring payment of expenses to the place of employment It was pointed out that if recruited workers were transported to the place of employment and repatriated free of charge, most non-recruited workers would choose to be recruited The result would therefore be that the voluntary system, by which 60 per cent of the labour was obtained on the gold mines and a much higher percentage in the other industries of South Africa, would disappear Moreover, wage rates in South Africa are based on the assumption that the worker pays his own transport and, if the employer were to bear the expense, wages would necessarily fall This point of view has been upheld by the Government of the Union of South Africa, which has decided against ratification of the Recruiting of Indigenous Workers Convention in view of the provisions contained in the Convention concerning the travelling expenses of recruited workers

From the laws mentioned above, it appears that there is one case outside South Africa where free repatriation has been refused

for the reason that wages are high enough to enable the workers to pay their own return expenses Chinese workers on the Billiton tin mines in the Netherlands Indies have not been granted a general right to repatriation as it is considered that their wages are sufficient for them to meet the cost of the return journey to China and as it is held that the transfer of these charges to the employer would lead to an increase in the length of contracts

Nevertheless, in view of the proposal of the Committee of Experts and of the general tendency of national law and practice, the Conference will no doubt consider that the Governments should be consulted on the principle of free repatriation It might, however, also be considered whether the Governments should be consulted on the desirability of an exception in cases where the competent authority is satisfied that proper allowance has been made for the payment by the workers of their own expenses in fixing the rates of wages A similar proposal was made by the Office in the draft of the Recruiting Convention, but was rejected by the 1936 Conference, the Office does not therefore feel justified in repeating the suggestion itself in the draft list of points

According to the recommendations of the Committee of Experts on Native Labour, the right to free repatriation should apply to every worker serving under a written contract, and to his family, when they have been brought to the place of employment by the employer or his agent, and in the following cases on the expiry of the contract, on its termination by reason of the failure of the employer to fulfil the contract, on its termination by reason of the worker's physical incapacity, and on its termination by mutual agreement or on the application of one of the parties These suggestions are obviously linked up with those made by the Committee of Experts in regard to the termination of the contract, and, while there would not appear to be any doubt about the necessity for applying the principle of free repatriation, if it is accepted, to the cases of normal expiry of the contract and of inability to fulfil the contract by either employer or worker, there may be some doubt as to its expediency in the cases of termination of the contract by mutual agreement or on the application of either party If the Conference should decide to consult the Governments on the various possibilities of anticipated termination of the contract discussed in the preceding Chapter, it does not follow that the right of repatriation in such cases should necessarily be contemplated or should be contemplated in an

absolute form It has been pointed out that it might not always be in the worker's interests to make this right absolute, as in certain cases it might hinder the termination of the contract On the other hand, the view has been expressed that, unless there was an absolute right to free repatriation, facilities for terminating the contract might remain illusory Nevertheless, in view both of the recommendations of the Committee of Experts and of the considerations set out in the preceding chapter, the Office hopes that the Conference will agree to the consultation of the Governments on these points, leaving any adaptation, if such adaptation should prove necessary, to be made in the light of the replies of the Governments

The Committee of Experts further suggested that the worker's family, if authorised to be with him at the place of employment, should be entitled to free repatriation in the event of his death The justice of this proposal and its value to the administrations need no amplification, and it is included in the list of points for consultation of Governments

It was pointed out at the beginning of this chapter that the question of repatriation is a general social as well as a labour question In particular, the necessity for repatriation will vary with the demographic situation in the territories concerned and the corresponding policies of the administrations concerning settlement For this reason it appears essential to consult the Governments on the necessity of a permissive exception when by his own desire the worker is settled at or near the place of employment

The draft list of points submitted to the Conference also contains the suggestions of the Committee of Experts that it should be open to the national law or regulations to fix a time limit for the exercise of his right to repatriation by the worker, and to make it compulsory for the worker to accept repatriation, it may, however, be considered that the second of these suggestions is unnecessary in a text dealing with contracts as it is obviously part of a wider question of public policy

Finally, the list of points deals with the measures to be taken for the protection of the workers during their journey home, these points follow the same lines as the provisions of the Recruiting of Indigenous Workers Convention concerning the journeys of recruited workers

CHAPTER XI

RE-ENGAGEMENT CONTRACTS

The preceding chapters have dealt successively with the problems that arise in connection with the contract of employment from the time of its conclusion to the time when, by its normal termination or by cancellation before the date stipulated in the contract, the worker is repatriated to his home But it may and frequently does happen that the worker, on the conclusion of his initial period of service, agrees to sign a re-engagement contract with the same undertaking This re-engagement raises certain problems, the most important of which are the following Should the conclusion of a new contract be permitted before the worker has had an opportunity of spending some time at home, more especially if his family has not accompanied him to his place of employment ? Should not the re-engagement contract be so limited in length as to be in any event shorter than that of the original contract ? What supervisory measures are necessary in connection with the conclusion of a re-engagement contract, with a view in particular to safeguarding the liberty of the contracting worker ?

§ 1 — Law and Practice

In the *Belgian Congo*, if a contract is renewed before it has expired, the term of the new contract begins from the date on which renewal is agreed to and not from the date of expiry of the original contract The object of this provision is to ensure that no worker is bound at the moment of signing any contract for a total period of more than three years

In the territories administered by *Great Britain and the Dominions*, the regulation of re-engagement so as to limit the maximum period of absence of the worker from his home territory may be contained in the provisions of inter-territorial agreements The Mozambique Convention between the Governments of *Portugal* and the *Union of South Africa* provides for an original contract of 12 months and the extension of this contract by re-engagement up to an additional six months The maximum period

of service is in no case to exceed 18 months In the Agreement between *Southern Rhodesia* and *Nyasaland* and *Northern Rhodesia*, although contracts and re-engagements under contract are not specifically treated, a similar principle is found The Governments agree that it is desirable that emigrant Natives in general should return to their homes after a period which it is declared should not exceed two years and might well be less, and that after two years they should be repatriated, exceptions being permitted on reference to the Labour Commissioners of the labourer's country of origin

Except for such agreements, outside the *Pacific* dependencies few specific provisions concerning re-engagement figure in the British labour laws In the *Mandated Territory of Tanganyika* and in *Zanzibar* the question is treated in connection with foreign contracts In Zanzibar it is provided that when an employer wishes to re-engage a servant under a foreign contract he and the servant shall appear before the British Consul or competent British authority, who is to satisfy himself that the servant agrees to the re-engagement In Tanganyika no servant desiring to extend his period of engagement abroad is allowed to do so without the consent of the Governor Elsewhere it would appear that the provisions making the employer responsible for the repatriation of workers employed abroad within a specified period after the termination of the contract and for the payment of deferred wages on the worker's return make the contract re-engagement of British Africans employed abroad illegal without special permission In *Northern Rhodesia*, even the continuation of employment after the end of the contract may be subject to official approval If he thinks it desirable, the attesting officer may insert as a condition in any foreign contract not approved by the Secretary for Native Affairs that any re-engagement of the worker shall be subject to the approval of a competent officer in the district of employment In *Mauritius* no special provision is made for the duration of re-engagement contracts, except that they are considered as being concluded for one month if neither party has given notice of termination of the original contract in due time

In the Australian and British *Pacific* dependencies the provisions concerning re-engagement are detailed In various places they fix a maximum period for the re-engagement contract, limit the total period of absence, provide when and where the re-engagement contract may be concluded, and stipulate administrative supervision

One of the most detailed laws on this subject is that of *New Guinea under Australian Mandate* It is provided that at any time within the three months preceding the determination of the contract a labourer may execute another contract with his employer Nevertheless, any labourer who is not a skilled labourer or domestic servant and who has been employed for more than four and a half years under contract during the previous five years, shall be returned home and may not be contracted before the expiration of three months after his arrival home Exemptions may be granted from this provision A skilled labourer or domestic servant is required to be returned home by his employer after the end of each contract for a period of one month for each completed year The local officer, however, may, if satisfied that the labourer is not desirous of returning home, make such order as he thinks fit

In *Papua* the precautions appear stricter Except with special consent of the Government authority, no Native may be signed on for two periods of three years unless he has been returned to his village

at the end of the first period and an interval of at least one year has intervened Except with special consent, no Native may be re-engaged under successive contracts for a longer total period than four years, provided that this consent is only withheld in special cases for the re-engagement of Native artisans or domestic servants The re-engagement takes place before a magistrate, and without written consent no Native is permitted to re-engage unless he has been paid in full the wages due to him The central authority may entirely prohibit the re-engagement of any Natives from specified districts or for specified work

In *Fiji* an old law (Labour Ordinance of 1895) stipulates that any Native of the Islands employed on a plantation may on the expiration of his original contract be re-engaged for a further period of twelve months, no limit is set to the number of successive re-engagements The procedure for the conclusion of contracts of re-engagement is the same as for the original contracts

In the *New Hebrides* no British subject may re-engage a Native without special permission unless the latter has been previously sent home Such special permission is not granted until the Native has been examined in the presence of the employer of two non-Native witnesses and of two witnesses selected as far as possible from his own tribe, and has of his own free will declared that he wishes to re-engage Re-engagement contracts are limited to one year

In *Nauru under Australian Mandate*, where the workers concerned are Chinese, the sole provision is that re-engagement contracts are to be made before the Administrator and to be subject to the provisions of the Labour Ordinance

In the *Gilbert and Ellice Islands* a 1929 amendment provides that an unmarried labourer or a labourer accompanied by his wife and family engaged for a period of three years may, upon completion of two years' service, and subject to the approval of the Resident Commissioner, re-engage for a further period, making the total term of service four years from the date of first engagement

In the *British Solomon Islands* there appears to be no limitation on re-engagement contracts The only provision is that a new contract shall be executed and ratified in accordance with the provisions of the law

The legislation of the *French colonies* in Africa generally provides that a contract may be renewed by simple agreement between the parties The only formality required is that the words " Visaed for renewal " are endorsed on the statutory three copies of the contract

In *French Equatorial Africa*, however, the new engagement is required to be submitted for approval to the subdivisional officer of the district in which it is signed, he signs the new engagement and sends a duplicate to the subdivisional officer of the district of origin of the worker concerned In the Upper Volta the law provides that a contract of employment may be renewed only for one or more periods of not more than six months at a time

In *Indo-China* the length of the re-engagement may be one, two or three years The renewal of a contract may not take place more than three months before it is due to expire and the formalities are to be executed in the presence of the competent attesting authority The period of three months may be extended to six months with the permission of the labour inspector In the case of Javanese workers engaged

by contract in undertakings in Indo-China, the length of the new engagement may not exceed that of the original engagement

In *New Caledonia* the re-engagements of workers belonging to Pacific peoples are recorded, like the original engagements, by the officers of the Native Affairs Department In the case of immigrant labour, re-engagements are required to be authorised by the Chief of the Immigration Service and the same formalities to be observed as for the original engagement

In the *French Establishments in Oceania*, the re-engagement contracts of immigrant workers are entered into before the local immigration officer with the previous consent of the Immigration Commissioner

In the *Italian colonies* the legislation does not fix the maximum length of re-engagement contracts any more than the length of original contracts In *Eritrea*, however, the Decree of 1916 concerning domestic servants and workers employed in commercial and industrial undertakings stipulates that, if notice of termination of a contract is not given within the statutory period, the contract is considered as being tacitly renewed for the same period as the original contract

In the *Netherlands Indies* the legislative provisions concerning re-engagement contracts are as follows Until the Coolie Ordinance was revised in 1936, workers under penal sanctions might be re-engaged under similar contracts as often as they desired The length of the re-engagement contract might not exceed a certain maximum, fixed in 1931 at one year When the Ordinance was revised the possibility of re-engagement under penal sanctions was abolished When the law no longer permits a worker to be employed under penal sanctions the employer may retain him in his service as a " free ' worker

These provisions will shortly be applied to Chinese labour on the tin mines of Banka and Billiton

In the case of " free " workers, the law fixes no maximum length for the original contract or for the re-engagement contract, it allows successive engagements to an unlimited extent and without any interval

In practice, the duration of re-engagement contracts of " free ' workers is as varied as that of the original contracts It would appear to be 18 months as a general rule on the tobacco plantations on the East Coast of Sumatra The workers employed on these plantations as " field coolies ' on task rates, and who are generally re-engaged workers, are, however, engaged for a year on the understanding that if the annual harvest has not been completed when this period expires the contract will remain in force until the end of the harvest Sometimes engagements are for the day and are tacitly renewed from day to day, this method of engagement is used more especially in the case of persons who are not required to work regularly, such as elderly workers in receipt of pensions, certain categories of women workers, etc These contracts may be terminated on one day's notice

In the case of workers engaged for employment abroad, the restriction of the length of their re-engagement contracts is generally left to the legislation of the country of employment This is the case with regard to Dutch Guiana On the other hand, for New Caledonia the Government of the Netherlands Indies has itself fixed the maximum length of re-engagement The model contracts stipulate that when the original contract expires the worker may enter into a fresh contract for a period of not less than six months or more than two years Workers employed abroad may accept successive re-engagements for an indefinite period

The re-engagement of " free " workers employed in the Outer Provinces is not subject to any special formalities, except that the employer is required to enter in a register the name of the worker, the date of the beginning and end of his period of service, his wages, and the amount of his debts if any

In the case of workers recruited for employment abroad, the formalities for re-engagement contracts are left to the legislation of the country of employment

For Javanese workers brought to *Dutch Guiana* under contract, re-engagement is permissible under the model contract drawn up by the Governor-General of the Netherlands Indies and its length is expressly fixed by the legislation of Guiana at not less than one or more than five years In recent years it has in practice always been one year For some time, moreover, the Government has been considering the complete abolition of long-term re-engagement contracts for immigrant labour The present limitation to one year may therefore be considered as a transitional measure In former times the planters insisted that re-engagement contracts should be maintained, because it was in their interests to retain in their service workers who had acquired a certain experience and the habit of regular employment under their original contract In addition, the Javanese were usually willing to contract new engagements, not only to obtain the re-engagement bonus, but also because the security enjoyed by plantation workers seemed more attractive than the uncertain existence of an independent settler Nevertheless, as was explained in Chapter I, the number of Javanese engaged under long-term contracts has become extremely small as compared with the number of " free " Javanese workers

Under the 1911 Labour Ordinance workers employed in forestry undertakings may accept a fresh engagement under the same conditions as their original contract, either tacitly by continuing to work after the first contract expires, or explicitly by a new agreement with the employer In the former case the re-engagement contract may be terminated on fifteen days' notice, and automatically expires at the end of the current year In the second alternative the new period of service, which must be expressly fixed, may not extend beyond the end of the following calendar year

The conclusion of re-engagement contracts by Javanese workers imported to Dutch Guiana is subject to the laws of that territory, which require the contract to be in writing, on pain of nullity, and to be drawn up in the presence of the officer appointed for the purpose The worker is not permitted to conclude a new contract unless he can produce a certificate from the competent authority to the effect that he has completed his first period of service The contract is explained to him in his mother tongue, and the officer satisfies himself that the worker has understood its meaning

As has just been mentioned, the re-engagement of a worker in forestry undertakings may take place by tacit agreement or by a formal contract The worker is considered as having tacitly accepted his re-engagement if he continues to work after his original contract has expired and neglects the first opportunity offered to him of returning home If he is re-engaged by a formal agreement, the employer is required to mention the fact in the worker's work-book and in his own register He is also under the obligation to notify in writing as soon as possible the officer before whom the original contract was concluded

In the *Portuguese colonies* any worker may conclude a new contract with his employer within ten days of the expiry of his first contract

In case of written contracts, however, no contract may be renewed without the express permission of the Curator-General for the colony in which it is to be concluded The renewal of the contract is prohibited if the further period of employment, added to the original period, exceeds (*a*) three years in the case of a worker employed outside the colony in which he was recruited, (*b*) two years in the case of a worker engaged in his colony of origin with the co-operation of the authorities, (*c*) one year in the case of a worker engaged without the co-operation of the authorities

Any application for authorisation to conclude a new contract is required to be submitted by the employer or the worker within the last two months of the period of validity of the contract which is about to expire

The wages under the new contract in all cases are to be at least 10 per cent higher than those under the previous contract

The Curator or his agent may permit an extension of the contractual period of employment without requiring a new contract Such permission may only be granted on the following conditions (1) when the worker so requests in his own interests, and the employer agrees to retain him in his service, (2) when, in exceptional cases, the departure of workers and the subsequent stoppage of work may cause serious loss to the employer, and the workers consent to postpone their departure in return for a compensatory bonus The period of employment may in no case be extended beyond (*a*) one month if permitted by the agent of the Curator for the place of employment, (*b*) two months if permitted by the Curator in the case of workers recruited in the colony of employment, (*c*) three months if permitted by the Curator in the case of workers recruited outside the colony of employment

Employers using unlawful means of persuading workers to renew their contracts or to apply for an extension, by inducing them to accept obligations which they cannot fulfil, or by giving them a false impression of their duties, or by inspiring them with unfounded fears of administrative penalties, render themselves liable to a fine of from 500 to 5,000 escudos

§ 2 — Conclusions

The preceding analysis of the legislation shows that, in so far as the question of re-engagement is regulated, the situation varies from one territory to another according to the colonial policy of the different administrations, and in particular according to their views on the question of workers being accompanied by their families and settling permanently

Where the authorities are anxious to prevent the detribalisation of the workers, there is a tendency to restrict the total length of the contract and the possibility of its extension, and to require the workers to return to their home district when this total period has elapsed, or else to require them to spend a certain period in their own country after each period of contract

In other circumstances the authorities may be resigned to the permanent departure of the workers, or may even encourage such

a step with a view to promoting the colonisation of certain areas In such cases their sole desire is to safeguard as far as possible the individual liberty of the contracting worker by statutory limitation of the length of the re-engagement contract, and by official supervision of the re-engagement operations

The restriction of the length of the re-engagement contract has the advantage of giving the worker more frequent opportunities of ending his dependence on his employer Since one of the main reasons advanced as justifying long-term contracts is the necessity for the employer to recover the cost of the recruiting, transport, and acclimatising of his workers by retaining them in his service for a sufficiently long period, it seems reasonable to fix a shorter period for the re-engagement, which does not involve these expenses, than for the original contract

In some cases the renewal of a contract before the expiry of the original contract may involve an irregular extension of the total length of the contractual period Two methods have been used in legislation to avoid this danger it may be prescribed, as in the Belgian Decree, that the new period of service begins not on the expiry of the original contract but on the date of renewal, or it may be laid down, as in Portuguese legislation, that the renewal of the contract is possible only within ten days after the expiry of the original contract

However effective the legal provisions restricting the duration of the re-engagement contract may be, it still seems necessary that the conclusion of this contract should be subject to administrative supervision similar to that exercised at the conclusion of the original contract If there is no such supervision, the Native may be obliged more or less against his will to agree to an extension of his period of employment It is moreover necessary to make certain—and this cannot be done adequately unless an officer is present when the new engagement is concluded—that the original contract has been faithfully complied with by both parties (and especially that the questions of advances and of wages have been completely settled), and that the statutory provisions concerning re-engagement are correctly applied

It would not, however, appear to be necessary to require exactly the same guarantees for the re-engagement contract as for the conclusion of the original contract Provisions such as those concerning medical examination may not be necessary in the case of workers who have proved their physical fitness by completing an initial period of service

The Committee of Experts on Native Labour, in its conclusions concerning re-engagement contracts, suggested in the first place that national laws or regulations should prescribe the special conditions under which workers should be permitted to conclude written re-engagement contracts, having regard in particular to the desirability of allowing workers whose families have not accompanied them to the place of employment to return to their homes on the expiry of any period of service In the second place, the Committee suggested that the maximum period of service that may be stipulated in written re-engagement contracts should be shorter than the maximum period permitted in original contracts Finally, it proposed that the conclusion of re-engagement contracts should be subject to the same essential guarantees as the conclusion of original contracts, particularly in order to ensure that the worker has freely consented thereto

The Office therefore considers that the first question which Governments should be asked with regard to re-engagement contracts is whether the maximum duration of such contracts should be fixed by international regulations or should be left to the initiative of the various colonial Powers, it being understood that in the second alternative the maximum length of re-engagement contracts as fixed by the laws of each country should always be shorter than the maximum for original contracts

The Committee of Experts made no attempt to fix a maximum period for re-engagement contracts The Office considers, however, that it would be desirable to ask Governments, in the event of their being favourable to maximum figures being laid down in international regulations, to express their views as to the desirability of varying the length of the contract according to whether the worker is or is not accompanied by his family The Office would suggest as a mere indication that the maximum might be fixed at twelve months for workers accompanied by their families and six months for workers proceeding alone to their place of employment

The Office also proposes in the draft list of points that Governments be asked to give their views on the suggestion that, whenever practicable and desirable, a worker not accompanied by his family should not be permitted to conclude a re-engagement contract until he has had an opportunity of spending some time at home on the expiry of his original contract

Finally, the Office would suggest that Governments be consulted as to the necessity for administrative supervision of the conclusion of re-engagement contracts

CHAPTER XII

PENAL SANCTIONS

From its introduction and until recent times, one of the main features of the indigenous labour contract has usually been the application of penal sanctions for breach of contract by the worker This situation still exists in many territories where Native labour is employed, but in some colonies the development of labour legislation has led to the gradual disappearance of penal sanctions although long-term contracts have been retained, whereas in other territories penal sanctions and long-term contracts have both been abolished or have fallen into disuse Moreover, the application of penal sanctions to workers who fail to fulfil their obligations is not restricted to long-term contracts by the laws of many countries, but is extended to the employment of Native labour in all its forms

The following pages will contain the usual summary of the law and practice in the different countries with regard to penal sanctions Before beginning that survey, however, it would seem desirable to explain what exactly is meant by penal sanctions, for the term, as often used, has a wide meaning, it includes not only the provisions of penal law concerning breaches of contract in the strict sense, but also the penalties imposed for offences against public order and against health and safety regulations A distinction must, therefore, be made between the different kinds of offences for which sanctions are imposed under penal law in the various legislations

These offences may be classified roughly in the following three groups

(1) *Breaches of the obligation to perform the service stipulated in the contract* This includes in particular the following offences refusal or failure to begin the service, refusal or failure to perform the service, absence without leave or without valid reason, desertion, negligence in the performance of work, lack of diligence

(2) *Offences against public order and labour discipline, and actions other than those mentioned in paragraph (1) which involve material or other loss to the employer* This group would include the following offences drunkenness while at work, violent language or insults, threats, assault or disorderly conduct, use of the employer's property without his permission, acts of omission or commission involving material or other loss for the employer

(3) *Offences against health and safety regulations*

A study of the sanctions imposed for these categories of offences in more advanced countries leads to the following conclusions The offences in the first group do not, according to modern legal principles, come under the penal law, but are dealt with by means of civil sanctions or, in the case of less serious offences, by disciplinary penalties Those of the second group are of a mixed character Some of them are usually dealt with in more advanced countries by civil sanctions or possibly by disciplinary penalties There may, however, be a certain element in any of those offences which would render the guilty party liable to penal sanctions in any country Offences of the third group involve penal sanctions under modern legislation

It would appear, therefore, that it is only in respect of offences of the first group that there is a profound difference between the law relating to labour offences in territories where Native labour is employed and that of countries with modern conditions of employment In countries with European legislation it is considered a retrograde step to have recourse to penal law to compel a worker to fulfil his contract Penal sanctions, which are necessarily derogatory to human dignity and liberty, are considered as an *ultimum remedium* to be used only very exceptionally in connection with contractual obligations Their application to contracts of employment in particular is repugnant to modern legal conceptions Opposition to them has become stronger with the development of social legislation which is intended to give more positive expression to the respect due to human dignity At the same time the use of penal sanctions in oversea possessions has been more sharply criticised, so that this question has become one of the most controversial ones in connection with colonial legislation This chapter will therefore deal mainly with penal sanctions of the first type

Only penal sanctions applicable to the worker will be examined in this chapter It must however be noted that, in most colonial legislations, extensive provision is made for criminal penalties for

offences committed by the employer The Netherlands Indian Coolie Ordinance, for instance, provides for the infliction of fines and/or imprisonment on employers for breaches of its provisions concerning such matters as payment of wages, advances and fines, overtime, hours of work and rest, housing, medical assistance, repatriation, etc Such penalties, however, can hardly be compared with the sanctions inflicted on workers in the case of offences of the first type mentioned above, still less can they be considered, as has sometimes been done, as a sort of counterpart of the sanctions applied to the worker In any case, this extension of the principle of reciprocity in the contract of employment to the question of penal sanctions has not been accepted by certain Governments which have abolished penal sanctions for the workers but retained the statutory penalties for infringements of the protective legislation by the employer

§ 1 — Law and Practice

In the *Belgian Congo* the Decree of 16 March 1922 [1] provides for civil and penal sanctions to ensure compliance with obligations arising out of contracts of employment According to Belgian commentators, the distinction between civil and penal sanctions is as follows

(1) The purpose of civil sanctions is to safeguard private interests When one of the parties does not fulfil his obligations under the contract of employment, the injured party is protected by the following legal sanctions cancellation of the contract by a court of law, immediate termination of the contract for serious offences, restitution by order of a court, fines due to the employer under the contract, damages for the employer, coercive detention *(contrainte par corps)*

Coercive detention means sentence to imprisonment when the party losing a case does not pay the damages or make the restitution ordered by the court or fails to pay the costs of the action Such detention does not release him from the necessity for payment but is intended simply to compel him to pay

Fines cannot be imposed by an employer except for offences against labour discipline or the rules of the establishment, the total of such fines may not exceed the wages due for the day on which they were incurred Deductions from wages on account of material injury are prohibited; the employer is not entitled to take the law into his own hands, but in exceptional cases he may make deductions from wages in respect of damages for the loss or destruction of articles belonging to him

(2) The purpose of penal sanctions is to safeguard the interests of the public, and they are applied in order to repress acts considered by the legislator as contrary to the public interest They may be imposed in

[1] This Decree was applied to the *Mandated Territory of Ruanda Urundi* by Order of 15 December 1927

the following cases for defacing or destroying a work-book or for refusal to submit it to the employer for the entry of payments or deductions made from wages refusal to comply with obligations imposed on the worker by the Decree by agreement or by custom, serious or repeated offences against labour discipline or the rules of the undertaking Prosecution for these offences takes place only if the employer lodges a complaint Provision is also made for penal sanctions against a Native who does not comply with the provisions of the special Ordinances concerning industrial hygiene

In cases connected with contracts of employment two of the sanctions laid down in the Penal Code may be applied, penal fines and penal servitude (a penal fine being paid into the public treasury, whereas a disciplinary fine under the contract of employment is payable to the employer) When the magistrate sentences one party to pay a fine to the treasury he must always specify what period of imprisonment (penal servitude in the Congo) must be served if the fine is not paid The Code for the Congo describes such imprisonment as subsidiary penal servitude It absolves the guilty party from payment of the fine and thus differs from coercive detention

Penal sanctions and civil sanctions may both be imposed for the same action if such an action should be harmful both to the public interest and to the private interests of some individual, for example wilful breach of contract is considered by the legislator as affecting not only the interests of the employer but also those of the public

No provision is made in the Belgian Code for penal sanctions for breaches of contractual obligations, this Code applies to all contracts, including contracts of employment, the general rule of civil law that the only remedy for non-performance of contractual obligations is the payment of damages The Civil Code for the Belgian Congo, however, while applying the same principle for contracts in general, makes an exception in the case of contracts of employment The reasons for this exception to the general principle of civil law were explained in the following terms by the Colonial Council when considering the Decree of 17 August 1910, on which the present Decree of 16 March 1922 is based " The Decree of 1888 added repressive sanctions to the existing civil sanctions and these have rightly been retained in the present draft In new countries such sanctions are essential for ensuring compliance with contracts Penal coercion will still be required for a long time in order to teach the Native that agreements which are legally drawn up have legal force between the parties and must be carried out in good faith "

When a Native worker is guilty of an offence against the Decree or the clauses of his contract an employer cannot use physical force to compel him to carry out his duties He must apply to the magistrate, who can impose penal sanctions If the worker is within a radius of not more than 25 kilometres from the seat of the competent judicial authorities, any representative of the authorities or of the public forces may, when requested to do so by the employer or one of his representatives, summon and compel the worker to appear immediately before the competent judicial officer or magistrate The employer is a private individual who has no powers in this respect and he is therefore not entitled to arrest and detain a refractory worker

In examining the situation in the territories administered by *Great Britain and the Dominions*, it will be convenient to begin with Africa

Like other features of contract labour law, the system of penal sanctions as found in the *Union of South Africa*, in the *British South*

African dependencies, and in certain other British African dependencies, has been deeply influenced by the Cape Masters and Servants Act, in the case of penal sanctions, more particularly by the amending Act of 1873 It therefore appears necessary to detail some of the numerous provisions of the Cape law

In the Cape Province a servant is liable on conviction to a fine of £1 or, in default of payment, to a maximum term of imprisonment of one month for the following offences (1) failure to commence service without lawful cause, (2) absence without leave,-(3) intoxication during working hours, (4) neglect of duty, (5) unauthorised use of employer's property, (6) refusal to obey lawful orders, (7) brawling, (8) abusive language A second or subsequent conviction for any of these offences within six months of a previous conviction renders the offender liable to a fine of £3 or, in default of payment, to imprisonment for six weeks For the following more serious offences a fine of £3 may be imposed for the first offence, or imprisonment for two months without the option of a fine (1) endangering property by wilful breach of duty, neglect or drunkenness, (2) similarly failing to preserve property, (3) as a herdsman, failing to report or account for loss of animals, (4) improperly alleging loss of other property, (5) assault, (6) desertion For a subsequent offence within six months of the first provision is made for a fine of £5 or three months' imprisonment

The 1873 Act limited the above penal sanctions to servants employed in agriculture or on farms A penalty, however, of £2, or one month's imprisonment in default of payment, was provided for other adult servants on conviction of any of a list of offences which included most of those mentioned above An 1889 amendment, moreover blurred the distinction between agricultural and non-agricultural servants by subjecting to the penalties provided for agricultural servants any man-servant employed as a domestic servant, or to perform any bodily labour in manufactures, or as a boatman, porter, groom, stable-keeper, gardener, or in any other occupation of a like nature On the other hand, the laws which in 1911 were consolidated in the Union Native Labour Regulation Act provided penalties for Native labourers employed on mines and works, and thus established a distinction between industrial and non-industrial employment

Subject to slight variations, the penal sanctions contained in the Cape Masters and Servants Acts are to be found in the other provinces of the Union, in the *Mandated Territory of South-West Africa*, in *Basutoland* and *Bechuanaland* to which the Cape law was extended, and in *Swaziland* to which the Transvaal law was extended It is not necessary to enumerate these variations One common feature, however, is of importance, it is the general power under the laws of employers to require their servants to proceed before a magistrate or to accompany them before the magistrature to answer any charge which is being laid by the employers This in fact confers powers of arrest on an employer, although, as shown in connection with the termination of the contract, this power may be held to be mitigated by the court's right to cancel a contract if it judges that the employer has brought a frivolous charge against his servant.

To complete the account of penal sanctions for agricultural servants in the Union of South Africa, mention must also be made of the Native Service Contract Act 1932, relating to Natives engaged for agricultural work in return for farming privileges Under this Act any person convicted of an offence is liable to a fine of £10 or, in default of payment,

to imprisonment for two months The offences are not enumerated, but it is presumed that they include any breach of the contract The Act also makes any contravention of the Masters and Servants laws by a male servant under 18 years punishable by whipping The Act does not apply to the Cape Province, and the last-mentioned provision does not apply to the Orange Free State Nor, of course, does the Act apply to the other parts of Southern Africa outside the Union which have been mentioned above

For Native labourers on mines and works throughout the Union the Native Labour Regulation Act of 1911 applies This Act again has two scales of offences and penalties A fine of £2 may be imposed on any Native labourer for (1) neglect of duty, (2) intoxication during working hours, (3) refusal to obey lawful orders, (4) abusive language, (5) breach of rules prescribed for order, discipline or health For the following offences the offender may be fined £10 or, in default of payment, imprisoned for two months (1) desertion, absence without leave, failure to enter or carry out service, (2) wilfully injuring or endangering persons or property, (3) improperly accepting an advance In addition, under a Native administration proclamation, the same penalty is applicable if any Native accepts an advance under a written agreement to present himself for attestation and without reasonable cause or excuse fails to fulfil his agreement

Elsewhere in Southern Africa similar penal sanctions have been enacted for Natives employed on mines and works The Mines and Works Proclamation of the *Mandated Territory of South-West Africa* contains penalties of £2 for minor offences, such as neglect of duty, and of £5 or two months' imprisonment in default of payment for such offences as desertion In *Basutoland*, *Bechuanaland* and *Swaziland*, although the term " Native labourer " has not the precise significance it has in the Union, Proclamations of 1912 and 1913 define offences of a similar character

In practice in Southern Africa penal sanctions have retained their importance In 1936 in the Union of South Africa there were 16,121 convictions under the Masters and Servants Laws and 16,942 under the Native Labour Regulation Act Of the persons convicted 28,297 were Native males, 2,403 Native females, 1,495 Coloured males, 235 Coloured females, 61 Asiatic males, 3 Asiatic females, 494 European males and 75 European females

A proposal has recently been made by the Director of Prisons to commit offenders under the Masters and Servants laws and other laws, the breach of which involves little moral stigma, to road camps and similar forms of employment including the hiring out of the convicted persons to private farmers This would be an alternative to their committal to prison

In the Mandated Territory of South-West Africa in 1936 there were 831 convictions of Natives under the Masters and Servants Proclamation In addition, 7 Natives were convicted under the Mines and Works Proclamation for refusing duty

The Cape Act has strongly influenced labour law in *Southern Rhodesia* The Masters and Servants Ordinance closely follows the Cape Act in regard to penal sanctions, fines being provided of £4, or one month's imprisonment in default of payment, for first offences, and of £8 or two months' imprisonment for subsequent offences A later law, the Native Labour Regulations Ordinance 1911, provides, on the lines of the South

African Act, for a fine of £10, or two months' imprisonment, for desertion, absence without leave, failure to commence service, endangering property or improperly accepting a second advance

In 1935, 4,761 Natives were prosecuted under the Masters and Servants Ordinance, mostly for desertion

In *Northern Rhodesia* the law was revised in 1929 In addition to containing provisions similar to those existing in the South, it reserves to the courts certain powers to treat cases as questions of the payment of damages or the provision of security This mitigation of the penal character of labour offences is also to be found in the East African laws, while in the British West African dependencies it has been used to transfer labour offences from criminal to civil jurisdiction

The Northern Rhodesian Ordinance firstly, as in the Cape, empowers an employer to require his servant to appear before a magistrate to answer a charge On any complaint, however, the magistrate may (1) adjust and set off claims, (2) direct fulfilment of the contract and the finding of security for such fulfilment, or (3) rescind the contract If the party neglects or refuses to find security, the court may commit him to prison for any period not exceeding three months Nevertheless, the Ordinance then goes on to empower the magistrate to pass any sentence authorised by the Ordinance or to fine either party or commit him to imprisonment in default of payment The offences to which allusion is thus made bring the Ordinance back into line with the principles of the Cape law A fine of half a month's wages or one month's imprisonment in default of payment may be imposed for (1) refusal or failure to commence service, (2) absence without leave, (3) intoxication during working hours, (4) neglect of duty, (5) unauthorised use of employer's property, (6) abusive language, (7) refusal to obey, (8) giving false name and address, (9) brawling For the following more serious offences the penalty may be £10 or six months' imprisonment (1) wilfully, by wilful breach of duty or through drunkenness, endangering property, (2) similarly, failing to preserve property, (3) as herdsman, failing to report loss of animals, (4) improper allegation of loss of property, (5) desertion Three months' imprisonment may be imposed if a servant leaves his service before working off an advance of wages

Certain minor disciplinary powers may be conferred on managers Under the Mining Regulations 1934 a mine manager may be authorised by the Commissioner for Mines to exercise the powers of an inspector and to impose fines up to £2 for breaches of the regulations These fines have to be recorded and are paid into general revenue Similar authority may be granted under the Explosives Ordinance Where thus authorised, a manager's authority extends to the white employees as well as the Native labourers

In *Nyasaland* the offences by workers detailed in the Employment of Natives Ordinance are (1) supplying false particulars on engagement, (2) failure or refusal to commence service, (3) desertion, (4) absence without leave, (5) intoxication during working hours, (6) neglect of duty, refusal to obey, endangering property, abusive language On first conviction a fine of 3*s* may be imposed or one month's imprisonment in default of payment For subsequent convictions the penalty is 9*s* or three months' imprisonment In the case of aggravated offences the fine may be £1, or the offender may be sentenced to three months' imprisonment The penalties do not appear to be frequently imposed In 1935, 67 persons paid fines, 20 were imprisoned in default of payment, and 13 were imprisoned without the option

In the *British East African dependencies* the penal provisions present great similarity to each other and to the Northern Rhodesian Ordinance, and may therefore be treated at shorter length

In *Kenya* the law confers a certain discretionary power on the magistrate as in Northern Rhodesia It then distinguishes between two classes of offence Imprisonment for one month and a fine of £5 may be imposed for (1) refusal or failure to commence service, (2) absence without leave, (3) intoxication during working hours, (4) neglect of duty, (5) unauthorised use of employer's property, (6) abusive language, (7) refusal to obey, (8) giving false name and address For more serious offences, as penalised in Northern Rhodesia, the maximum penalty is six months' imprisonment and a fine of £7-10-0 A penalty of three months' imprisonment may be imposed on any servant who receives wages in advance and leaves his employer before the advance is repaid[1]

In *Uganda* the offences are the same but the penalties are lower (one month's wages or one month's imprisonment in default of payment for class I offences, and six months' imprisonment or £7-10-0 for class II offences)

In *Zanzibar* with the same offences the penalties are slightly lower again, the maximum fines for class I offences being half a month's wages

In the *Mandated Territory of Tanganyika* the law is again similar For minor offences imprisonment is only imposed in default of payment of the fine, the maximum amount of which is half a month's wages (£5 or six months' imprisonment for major offences) Employers are permitted to impose fines of up to half a month's wages for offences against sanitation or safety This power may not be used in non-agricultural employment or by employers within three miles of a magistrate Records of the fines are subject to Government scrutiny and the money is used for Native welfare It appears that little use has been made of this provision

In *British Somaliland* the courts have the same discretionary powers as in other East African dependencies or may fine offenders a sum not exceeding 500 rupees, or, when the misconduct has been of an aggravated character, order one month's imprisonment

The following details will give some indication of the extent to which use is made of the penal sanction clauses in East Africa In 1935 in Kenya 206 Africans were sentenced to imprisonment for offences under the Employment of Natives Ordinance and 450 to work in detention camps [2] In the Mandated Territory of Tanganyika in 1936 there were 278 convictions of workers under the equivalent law In Uganda in 1935

---

[1] A Bill, recently prepared by the Government of Kenya, reduces penalties and notably provides that imprisonment may only be imposed in default of payment of fine Under the Bill the maximum penalties are for the first class of offences, a fine of half a month's wages or one month in default of payment, for the second class, £5 or six months in default of payment, for leaving service while owing an advance, £5 or three months in default of payment

[2] According to the Annual Report on Native Affairs, 1935 The Government Blue Book 1935 records a total of 833 Native labour convictions, including 488 sentences to work in detention camps, 152 fines paid, and 76 sentences of imprisonment Under the Resident Native Labourers' Ordinance the Blue Book records 945 Native convictions, with 390 sentences to detention camps and 220 fines paid

110 convictions were recorded in the British courts, 25 persons were sentenced to imprisonment, 57 to fines, and the remainder were warned or otherwise dealt with

In the *British West African dependencies*, the discretionary powers of the courts are all that is left of the old penal sanction system By limiting the possibility of imprisonment to cases analogous to contempt of court, the procedure has become one of civil jurisdiction only The present system may be illustrated by the *Gold Coast* Ordinance of 1934 The court acting as a civil court may adjust and set off claims between employer and employee, order the payment of damages and award costs, it may direct the fulfilment of the contract and order the finding of security, it may rescind the contract If any party so ordered neglects or refuses to make any payment or to find any security required by the court, the court may commit him to prison for not more than three months on condition that it is satisfied that he had sufficient means to pay the money or was able to obtain security

The system is the same in *Nigeria* and *Sierra Leone* In the *Gambia* penal sanctions have been repealed and it has apparently not been considered necessary to provide any special procedure for the adjudication of labour disputes Only one minor penal sanction remains in West Africa, it is the provision in the Sierra Leone law providing that any domestic servant, guide or carrier accompanying his employer on a journey who deserts during the journey may be fined a sum of £2 or imprisoned for one month No conviction, however, under this clause was recorded either in 1934 or in 1935

As regards *British territories in Asia*, reference has already been made to the abolition of penal sanctions in *Malaya*, *Hong Kong* and *Sarawak* In *North Borneo*, penal sanctions, as contained in the Labour Ordinance 1929, practically ceased to apply as from 1 January 1933, as a result of the Abolition of Indentured Labour Ordinance 1932, while in 1935 deletion of the relevant clauses followed

In the *British dependencies in the Pacific* where Native labour is employed, penals sanctions are detailed

In *Fiji*, the Masters and Servants Ordinance provides for criminal penalties whatever the duration of the contract whereas the penalties under the Fijian Labour Ordinance apply only to labourers working under a contract for more than one month Under the Masters and Servants Ordinance, the worker is liable to a fine not exceeding £5, or in default of payment, to imprisonment up to two months if he neglects to enter into service, or neglects or refuses to perform duty Under the Fijian Labour Ordinance, a worker who unlawfully absents himself from his duties or refuses or neglects to perform work may be punished with a fine not exceeding 3s for every day during which his labour has been lost to the employer, or in lieu thereof, with imprisonment up to one month Instead of imposing either of these penalties, however, the district commissioner may order the labourer to be sent back to the plantation After three convictions for unlawful absence, the labourer is liable to six months' imprisonment for every subsequent offence Unlawful absence for three consecutive days constitutes desertion and is punishable by a fine not exceeding £2, and in default of payment with imprisonment up to two months A deserter may be arrested without warrant by his employer or the higher staff of the plantation, or by a police constable, and sent back to the estate In addition to breaches of contract, a worker may be punished for breaches of discipline by

maximum fines ranging from £2 to £5, or, in default of payment, by imprisonment up to two months Finally, a worker is liable to punishment for wilfully or culpably causing damage to or the loss of goods belonging to or in charge of the employer, for contravening certain safety and health regulations, and for refusing or neglecting to assist in case of emergency The maximum fine which may be imposed for these offences ranges from 10*s* to £5 The maximum term of imprisonment which may be imposed either primarily or in default of payment of the fine, is from one to six months

In the *British Solomon Islands* a penalty of £2 for the first offences and of £5 for offences after the second may be imposed for unlawful absence from work, failure to obey lawful orders, and similar offences Absence for three consecutive days is treated as desertion and punishable by a fine of 3*s* for each day's absence or of £5 for a second offence Any fines imposed for these offences are recoverable as civil debts only On the other hand, in the case of desertion the employer is authorised to arrest the deserter Other offences enumerated in the Labour Regulations verge upon the sphere of criminal legislation They provide for fines of £5 or six months' imprisonment for damage to livestock, the dangerous use of fire, etc , and for fines of £10 or twelve months' imprisonment in the case of unlawful threats or assault by labourers

In the *Gilbert and Ellice Islands* the offences and penalties are not dissimilar For Ocean Island fourteen offences are listed, some of which (e g Chinese or Native employees entering the quarters of the other race) appear to be for the protection of public order, others (e g sanitary offences) appear to be based on reasons of health and safety, while others again are of a purely labour character For any of these offences a fine of 5*s* may be imposed on first conviction and on second conviction a fine of 10*s* or seven days' imprisonment in default of payment For more serious offences fines range from £1 to £5 with, in certain cases, imprisonment without the option of a fine ranging up to one month

There has been a steady decrease in the number of labour convictions in the Gilbert and Ellice Islands In 1935 only twenty-three Natives and eleven Chinese workers were convicted, and the total fines imposed amounted to only £6-15-3 Commenting on the decline in total convictions from 1,007 in 1930 to 55 in 1935, the British Government's report states that the decrease has been chiefly due to the decline in charges under the Labour Regulations, and that this in turn may be attributed to improved labour conditions and to a closer supervision of the labourers

In the territories administered by *Australia*, detailed provision is also made for the punishment of labour offences

In the *Mandated Territory of New Guinea* the Native Labour Ordinance 1935 provides that the courts may inflict a fine of £1 or impose a sentence of one month's imprisonment in the event of a labourer being convicted of absence from work, lack of diligence, refusal to perform work, or disobedience For riotous behaviour, abusive language, or injury to livestock, the maximum fine is £5 and the maximum imprisonment six months A number of other penal sanctions are contained in the Ordinance, such as absence without leave for more than four days, selling rations, refusal to accept medical treatment, and dangerous use of fire The Ordinance also provides that for breaches of discipline an employer may withhold the prescribed tobacco ration The punishment is endorsed on the labourer's contract and reported to an officer on the next inspection During the year ended 30 June 1936, 618 Natives

were convicted under the Native Labour Ordinance, of whom 374 were guilty of neglect of duty and 235 of desertion

In the *Mandated Territory of Nauru* and *Papua* the details of penal sanctions differ but are to the same general effect as in New Guinea No provision, however, appears to be made giving disciplinary powers to employers

In *British Guiana* a number of penal sanctions are contained in the Immigration Ordinance, under which large numbers of indentured East Indian labourers were introduced into the Colony There are now, however, no labourers employed under the Ordinance, which has consequently fallen into practical abeyance Penal sanctions nevertheless still exist under the Employers and Servants Ordinance For a breach of contract a fine of $24 may be imposed, and for damage to property the penalty is $24 or thirty days' imprisonment A worker improperly delaying to complete a job he has begun may be fined £50, and failure on the part of a servant under written contract to commence or continue service may lead to a fine of $96 or six months' imprisonment This latter provision, however, does not apply to aboriginal Indians In 1935, 284 labour cases were brought before the courts, there were 88 convictions, three persons were sentenced to imprisonment and 69 were fined

In *British Honduras* the penal sanctions laid down by law also remain extensive Under the Labour Ordinance refusal to commence or perform work and absence without leave renders the labourer liable to twenty-eight days' imprisonment or to a fine of two days' wages, plus a fine of six days' wages for every single day's absence The labourer may be arrested by his employer and taken to his work or brought before a district commissioner For injuring his employer's property by improper conduct the labourer may be imprisoned for twenty-eight days or fined a maximum sum of $100 For drunkenness, wilful disobedience, insolence or similar misconduct the maximum penalties are one month's wages or fourteen days' imprisonment For obtaining a second advance fraudulently provision is made for three months' imprisonment It appears, however, that this last offence is now dealt with under the Fraudulent Labourers (Advances) Ordinance, a 1928 amendment of which limits the penalties to a fine of £5 or one month's imprisonment In the case of domestic servants a number of penal sanctions are contained in the Masters and Servants Ordinance which, for instance, provides that for negligent work, injury to property, or insolent behaviour a servant may be fined one month's wages or, in default of payment, imprisoned for a maximum period of twenty-eight days

In the *British West Indian dependencies*, penal sanctions are in course of disappearance In *Grenada* a 1936 Ordinance repealed them as being obsolete Similar action was taken in 1937 in *Barbados* where the Governor stated that by general consent the removal of the penal clauses in the Masters and Servants' legislation was desirable In the *Leeward Islands* the Chief Inspector of the Police Force as far back as 1931 reported as follows " It is difficult to see the usefulness of the various Masters and Servants Ordinances in the Colony Amendments in the Ordinances have in effect reduced labour contracts to the giving of a week's notice on either side in the case of non-resident labour and of a notice of fourteen days in the case of resident labour In my opinion labour contracts could well be left to the taking of action by an aggrieved party by way of civil suit, thus doing away with the out-of-date and irritating procedure under a criminal statute "

Penal sanctions, however have not so far been abolished in the *Leeward Islands* Laws of 1922 and 1923 for the separate Presidencies list as offences abstention from service, wilful breach of duty, wilful disobedience and damage to property by gross carelessness or neglect The maximum penalty for any such offence is a fine of £2 or one month's imprisonment in default of payment In 1935 there were 81 convictions

Penalties for labour offences are also to be found in the legislation of *Bahamas*, *Jamaica*, *St Lucia*, *St Vincent* and *Trinidad* In certain cases it is provided that in imposing a fine time must be given for payment The International Labour Office does not possess figures in all cases of the number of convictions In the Bahamas, however, no single case was brought before the courts between 1932 and 1935

As regards the abolition of penal sanctions in the British West Indies, it should be noted that in the House of Commons, on 19 July 1937, the Secretary of State for the Colonies said that the question of the abolition of penal sanctions in the Leeward Islands had been taken up the previous year with the Governor and was under consideration in Antigua and the other Presidencies of the Colony He added that the desirability of causing the elimination of penal sanctions from Masters and Servants legislation at the earliest possible date had been impressed in the autumn of 1936 on the Governors of all the other colonial dependencies in the West Indian area Legislation had since been introduced in Barbados and Grenada repealing penal sanctions and the question was under consideration in Trinidad, Jamaica, British Guiana, British Honduras, St Lucia and St Vincent

In the *Spanish Possessions of the Gulf of Guinea*, the 1906 Regulations entrust the punishment of breaches of contract by the worker to the *Curaduria*, which is enjoined to inflict equitable penalties These penalties are not specified, but it is provided that, in the case of desertion, the penalty is not to exceed ten days' imprisonment For second and subsequent offences, if the employer is not prepared to keep the worker in his service and if the worker cannot obtain other employment, the Regulations provide for compulsory labour for the State or a municipality, such labour to be under supervision and to be remunerated by one-half of the wages stipulated in the contract

In the *French colonies*, the situation is as follows.

In *French Equatorial Africa* and *French West Africa* penal sanctions in the sense of a penalty imposed simply on account of failure to fulfil a contract of employment are unknown In the event of the unjustified absence of a worker the employer is entitled to make a deduction from his wages Absence is considered as "unjustified" if the worker deliberately absents himself without fulfilling the conditions required for "absence for lawful reasons" This is defined as absence due to one of the following causes sickness or accident, *force majeure*, or leaving the workplace with the employer's permission either because the worker has been summoned to appear before an administrative or judicial authority or because he wishes to lodge a complaint against a third party with such an authority

In French Equatorial Africa the deduction from wages is equal to twice the wages for the period of absence up to a maximum of one month's wages In French West Africa the amount is fixed by the arbitration board When the absence is excessively long the contract is automatically cancelled and the employer is no longer bound to repatriate the worker and may claim compensation In French Equatorial Africa the contract is cancelled if the unjustified absence of the worker

exceeds 30 days, in which case the employer can retain half the wages due to the worker In French West Africa cancellation is permitted if the absence exceeds a maximum fixed by the administrative authorities [1] and the employer may claim damages to be fixed by the arbitration board

If the worker fails to settle his monetary or other liabilities arising out of the decision of an arbitration board, he is liable, at the request of the other party, to be subject to coercive detention for not more than one month

In French West Africa, and also in French Equatorial Africa, the legislative authorities have definitely stated that the sanctions for failure to comply with a contract of employment must be of a civil nature " These are civil sanctions, to be applied solely by the European magistrate I am informed that certain administrators dealing with Native cases under the Native Labour Code have imposed penal sanctions for failure to fulfil a contract of employment I must insist that this practice should cease, and I would ask you to ensure that it does not recur " [2] " I wish to make it clear ", writes the Governor-General of French West Africa, " that the penalty of coercive detention for labour offences was included in the Decree solely because of the danger involved for certain undertakings if their workers failed to carry out the decisions of the arbitration board It therefore is and must remain an *exceptional* measure, and the main reasons for which it is applied in any particular case must be extremely serious " [3]

In *Togoland and the Cameroons under French Mandate* the legislation provides for the same system of sanctions damages fixed by the arbitration board and coercive detention for not more than one month in the case of failure to pay the damages There are, however, two clauses in the legislation of these mandated territories which may not fall exactly within the scope of the definition of penal sanctions but are remarkably close to it The first provides that any Native who is bound by a contract of employment and systematically fails to fulfil it in order to compel the employer to terminate the contract is liable to imprisonment for from six to fifteen days and a fine of from 50 to 100 francs, and, in the case of a second offence, to imprisonment for from one month to one year and a fine of from 50 to 100 francs The second clause assimilates breach of contract by the Native to vagrancy, thus rendering the culprit liable to the penalties for this latter offence

In *Madagascar* penal sanctions appear still more clearly in the legislation A deduction is made from the worker's wages for his first unjustified absence from work, a second unjustified absence or absence for more than fifteen days entitles the employer to terminate the contract and claim damages Apart from the sentence passed by the civil court, the arbitration boards may inflict on a Native worker who breaks his contract suddenly and without justification a penalty of from one to

---

[1] The local authorities have fixed very different maximum figures 3 days in *Mauritania* — 15 days a quarter in the *Upper Volta* — 6 working days a quarter in the *Ivory Coast* — 8 days in the half year in *Senegal* — 10 days in the year in the district of *Dakar* — 8 days a quarter in *Dahomey* — 30 consecutive days or 15 days a quarter in the *Sudan* — 8 days for six months' contracts and 30 days for contracts of a year and over in *Guinea*

[2] Circular of the Governor-General of French Equatorial Africa to the Lieutenant-Governors, dated 10 October 1911

[3] Instructions of the Governor-General of French West Africa, dated 29 March 1926

five days' detention and a fine of from one to 15 francs or either of those penalties singly It should be noted that the penal sanction is rendered less severe by three conditions attached to it in the first place the contract must be broken suddenly and without justification, in the second place it is optional for the arbitration board to impose the penalty or not, finally, the detention is of a disciplinary character and must take place in the premises reserved for administrative prisoners

The system of sanctions laid down in the special legislation for *French Somaliland* is the same as for Madagascar

In *Indo-China* the legislation concerning contractual labour makes provision for the following sanctions against the workers

A — A fine of from one to 15 francs and a penalty of imprisonment of from one to five days or either of these penalties singly may be inflicted in the following cases (1) when a worker makes an unfounded complaint, unless it was made in good faith, (2) when a worker is absent from the plantation for more than twenty-four hours without the permission of his employer, except when he was making a complaint to the administrative authorities or to a court of law, (3) when a worker wilfully inflicts bodily injuries or wounds on his own person in order to render himself unfit for work, (4) when a worker refuses, without valid reason, to obey a reasonable order of his employer or a representative of the employer or wilfully damages the employer's premises, (5) when a worker obtains employment by means of a false certificate, (6) when a worker creates a breach of the peace in the undertaking, even if he had due cause for complaint (7) when a worker is absent from work without justification

B — A fine of from one to 10 francs and imprisonment of from one to three days or either of these penalties singly may be inflicted on a worker who (1) refuses to submit his identity book to the authorities when asked to do so, (2) refuses or fails to go to the plantation sick-room or to hospital, or leaves such establishment without due permission, (3) fails without valid reason to perform his work, (4) sells or barters rations supplied by the employer The offence of absconding, which means that the worker has been absent from the undertaking for more than two days without due cause, renders him liable to a fine of from 16 to 250 francs and imprisonment of from six days to three months or to one of these penalties singly The contract may be cancelled at the request of the employer one month after he has given notification of the worker's disappearance

In the case of non-contract labour the Order of 10 February 1936, which made work-books compulsory in all the territories of Indo-China for every Native or Asiatic assimilated to a Native over the age of 18 years employed as a domestic servant or worker, whether in the town or in the country, under a verbal or written contract, stipulates that any Native who leaves his employment without giving the due period of notice is liable to imprisonment of from one to five days and to a fine of from 1 to 15 francs or to one of these penalties singly

In *New Caledonia* the regulations applying to aboriginal workers make provisions for the following sanctions in the case of habitual insubordination, refusal to work or absconding, a Native may be sent to the disciplinary labour camp for a period of from one to fifteen days A reward is also granted to any person who hands over to the Department of Native Affairs a worker who is absent without justification (absent without reason for more than six hours and not more than

72 hours) or who has absconded (absent for more than 72 hours) According to the regulations applying to immigrant labour, the Chief of the Immigration Service may send to the disciplinary labour camp for a period not exceeding fifteen days any worker guilty of one of the following offences (1) persistent negligence in the performance of his work, (2) absconding without permission and without valid reason, (3) creating labour troubles in a dwelling, workplace, workshop, shop or public place, (4) insubordination and refusal to work, (5) acceptance of a fictitious engagement

In the *French Establishments in Oceania* the regulations concerning immigrant labour provide for the following sanctions An immigrant who is unlawfully absent for more than three days is considered as a deserter and is liable to a fine of from 5 to 25 francs if he does not remain absent for more than one month A deserter who is absent for more than one month is treated as a vagrant and may be sentenced to imprisonment of from fifteen days to three months

The following are also considered as minor offences if an immigrant enters a dwelling-house or workshop against the will of the proprietor (a fine of from 5 to 100 francs), if a worker is disorderly or disturbs the progress of the work in any work-place (a fine of from 5 to 25 francs) The following are considered as misdemeanours (1) entering a dwelling-house or workshop against the will of the proprietor, with the following aggravating circumstances carrying arms, inciting to disorder or to cease work, or insulting the proprietor, his family or his subordinates (a fine of from 10 to 50 francs and imprisonment for from six to fifteen days), (2) making a false or unfounded complaint against an employer (a fine of from 50 to 150 francs)

The regulations concerning local labour permit the employer to ask for the cancellation of the contract one month after the worker has disappeared There is no penal sanction for breach of contract

In addition to the penal sanctions mentioned above, reference should be made to those imposed in practically all the French colonies on indigenous workers who, in cases of breach of contract, fail to repay advances of wages These sanctions would appear to be an indirect form of penal sanction for breach of contract

The legislative situation is as follows The non-repayment of advances had already been made a misdemeanor in several French possessions, when a Decree of the President of the Republic of 2 June 1932 codified the legislation and extended its application to all French colonies and possessions with the exception of those in North Africa, the West Indies and Reunion[1] Except in the latter territories, this Decree added to section 408 of the Penal Code concerning abuse of confidence the following supplementary provisions

" Any Native, French subject, French protected person, person under French mandate or person assimilated thereto, who is bound by a contract of employment freely concluded and who misappropriates or squanders advances of wages or an engagement bonus paid to him in cash, effects, food, goods, agricultural or industrial implements, or live-stock, in that he does not voluntarily carry out the work for which he contracted in order to obtain such advances or engagement bonus, shall be liable to

[1] The Decree in question appears not to apply in French Equatorial Africa, where the question is presumably still governed by the Decree of 22 October 1929

imprisonment for not less than two months and not more than two years and a fine of 25 to 3,000 francs, or to either of these penalties singly

"Any person who, after travelling at the employer's expense to the place where the work is to be performed, wilfully evades the obligations he has undertaken shall be liable to the same penalties.

"The First Offenders' Act of 26 March 1891 shall apply to the offences mentioned in the present section Section 463 of the Penal Code shall also apply '

The Decree also contains a section providing that an employer who brings an action against a Native for one of the above-mentioned misdemeanours must prove to the court that the delinquent, when he concluded his contract, was duly informed of the penal sanctions to which he would be exposed in the case of an offence against this Decree

With regard to the *Italian Colonies*, as far as the information at the disposal of the International Labour Office shows, the only penal clauses applying to workers in *Libya* are those contained in the Decree of the Governor General of 4 March 1936 According to that Decree, Native workers employed in undertakings engaged on contracts for civil or military public works who are transported at the expense of the undertakings for a distance of more than 100 kilometres to their place of employment are punished by the local authorities in accordance with the police regulations if they leave the work-place before the date fixed in their contract of employment

In *Eritrea*, the Governor's Decree No 2631 of 1 September 1916 concerning domestic servants and workers in commercial and industrial undertakings mentions the following offences for which workers may be punished Failure to fulfil obligations under their contracts, gross negligence in the performance of their work, failure to give due notice of departure and offences against discipline The penalties are laid down by customary law and would seem to be applied only when the worker is guilty of negligence in the performance of his work or damage to tools, animals or materials entrusted to him for his work In these cases, if an employer complains and if the worker has acted wilfully it is apparently possible, according to Native custom, to impose a fine which may amount to 120 thalers for the more serious offences In practice, however, the amount of the fine would appear to be fixed according to the instructions of the Colonial Government, which follows the principles of Italian law

Under section 133 of the Royal Decree No 1649 of 20 June 1936 concerning the organisation of the judicial system in Eritrea, fines which cannot be collected because of the insolvency of the Native in question are commuted by compulsory labour for the administrative authorities at the rate of 2 lire a day If the Native refuses to perform this labour he may be imprisoned

Under the above-mentioned Decree of 1916, workers in commercial and industrial undertakings may also be fined by their employers The Decree does not state whether such a fine and the penalty prescribed by customary law may be inflicted simultaneously or not The fine imposed by the employer may not be less than the wages for half a day's work or more than the wages for two days' work, in the case of a second offence it may not be less than two days' or more than four days' wages In order to protect the worker against abuses the Decree states that fines must be recorded in his work-book and in a special register which the employer must submit every three months to the District Commissioner In addition, the amount of all such fines must be paid into a fund

administered by the District Commissioner for various welfare schemes for the benefit of the Natives

In *Somaliland* the law prescribes penal sanctions for a worker who freely offers his services and then refuses to perform the work he has accepted or is guilty of gross negligence According to section 76 of the Royal Decree No 937 of 8 June 1911 concerning the organisation of the judicial system in the Colony, such actions are dealt with by the District Courts Consequently, under section 79 of the Decree, they involve liability to imprisonment for not more than one month and to a fine not exceeding 100 lire

In the *Netherlands Indies* the offences for which penal sanctions may be applied can be divided into three groups (1) breaches of contract which would normally be regarded as civil offences, (2) minor breaches of discipline in the undertaking, (3) offences against the health or safety regulations

The provisions on all these points apply only to the Outer Provinces and not to Java and Madura Moreover, they apply only to workers from another territory, i e from a foreign territory, from Java or Madura or from one of the Outer Provinces other than that in which the worker is employed Further, the provisions only apply to workers employed in undertakings not classified as " small undertakings "

The workers concerned fall into two categories those who are subject to penal sanctions for breach of contract in the strict sense, and those who are only subject to penal sanctions in respect of certain breaches of public order or of discipline in the undertaking The workers in the first group are those engaged under penal sanction contracts, the others are usually termed " free " workers

The penal provisions applicable to workers engaged under penal sanction contracts are contained in the Coolie Ordinance of 1931-1936, the regulations concerning Chinese labour in Banka and the corresponding regulations for Billiton. The penal clauses applicable to " free " workers are contained in the Order of 3 October 1911 (*Staatsblad van Nederlandsch Indie* No 540 of 1911) It should be noted that since the Coolie Ordinance was revised in 1936 it does not apply to workers serving under re-engagement contracts, a worker who accepts re-engagement automatically comes under the Ordinance of 1911 and becomes a " free " worker

According to the Coolie Ordinance the following acts constituting a breach of contract on the part of the worker are dealt with under penal law (1) absence from the undertaking without leave and without valid reason for more than 24 consecutive hours, (2) refusal to perform the work agreed upon in spite of repeated orders by the employer, (3) failure to appear at the undertaking at the date and time prescribed in the contract, (4) failure to carry out the orders concerning his work given by the manager of the undertaking or his subordinates in accordance with the Coolie Ordinance or with the contract, provided always that refusal to perform the work agreed upon is considered as a special offence

The penalty for the offences mentioned under (1) and (2) above is imprisonment for not more than one month or a fine of not more than 100 florins, if, at the date of the offence, two years have not elapsed since a previous sentence was confirmed, the period of imprisonment is increased to not more than three months and the fine to not more than 300 florins The penalty for the offences mentioned under (3) and (4) above is imprisonment for not more than twelve days or a fine of not

more than 50 florins No proceedings are taken against the worker unless the manager of the undertaking lodges a complaint The above offences are considered as minor offences, which means that they are dealt with by the magistrate's courts *(Landgerechten)*

The regulations concerning Chinese labour in Banka and Billiton contain almost identical provisions except that absence from work is defined somewhat differently as meaning the absence of the worker from the locality in which he is employed without written permission from the manager

The Coolie Ordinance and the regulations for Banka and Billiton further state that if a worker has been summoned before a Court of Law while his contract is in force, or has been sentenced to imprisonment or fails to return after a period of absence for illness or some other reason within the time limit laid down or within such time limit as is considered adequate by the local administrative authority he may, if necessary, be brought back to the undertaking by the police or by the employer's staff acting for the police

Before 1931 the legislation concerning employment under penal sanctions contained a provision to the effect that the penalty for absconding from work would not be applied to a first offence if the worker returned to the undertaking within the time limit allowed by the magistrate When the legislation was revised in 1931 this provision was omitted because it was found that the compulsory suspension of the execution of the sentence sometimes had undesirable consequences [1] Since then the suspension of the penalty for absconding is governed, like the other offences mentioned in the Coolie Ordinance, by Section 14 *a* of the Penal Code of the Netherlands Indies, according to which suspension of the sentence is optional in every case

The breaches of discipline in the undertaking mentioned in the Coolie Ordinance include the following Insubordination, insults or threats against the employer or his subordinates, stirring up disorder, brawling and drunkenness If there are no special penalties for these offences in the Penal Code, the penalty is imprisonment for not more than one month or a fine not exceeding 100 florins, and in the case of a second offence, imprisonment for not more than three months or a fine not exceeding 300 florins The worker is not prosecuted unless the manager of the undertaking lodges a complaint The acts mentioned are considered as petty offences Identical provisions exist in the regulations concerning Chinese labour in Banka and Billiton and for " free " workers in the Ordinance of 3 October 1911

The penal clauses for ensuring compliance with the safety regulations include those specified in the Coolie Ordinance for the following offences (1) when in the event of a catastrophe or imminent danger a worker refuses, in spite of the instructions of the manager or his subordinates, to give assistance even outside the hours of work prescribed in his contract or on agreed rest days or holidays, provided that he is in the undertaking on the day in question, (2) if a worker in a mining undertaking leaves the post assigned to him without the permission of his superior, or if he wishes to submit a complaint to the authorities on the grounds of maltreatment by his employer, the manager or their subordinates, and fails to notify his immediate superior of his intention when coming off duty at least twenty-four hours in advance The penalties for these offences are imprisonment for not more than one month or a

---

[1] *Bijlagen Handelingen Volksraad* 1930-1931, onderwerp 61, stuk 3 A, p 25

fine of not more than 100 florins increasing to imprisonment for not more than three months and a fine of not more than 300 florins for a second offence These also are considered as petty offences and the worker is not prosecuted unless the manager of the undertaking lodges a complaint Similar provisions exist in the regulations for Banka and Billiton

Reference should also be made to certain disciplinary rules for the maintenance of hygienic conditions in the undertaking When a worker employed under a penal sanction contract falls ill and the proper medical officer considers it necessary to send him to the hospital attached to the undertaking so as to prevent the spread of infection to other workers, he may, if necessary and at the doctor's request, be transported to hospital by the police or by the employer's staff acting for the police If a worker has been admitted to such a hospital when ill and leaves it without the written consent of the chief medical officer of the hospital he may be brought back in the same way The Ordinance of 3 October 1911 contains a similar provision concerning " free " workers

The Ordinance of 6 September 1910 (*Staatsblad van Nederlandsch Indie* No 469 of 1910) authorises the doctor in charge of the hospital attached to the undertaking to inflict on patients who create a disturbance such disciplinary penalties as depriving them of tobacco or of certain facilities or confining them to their rooms More serious disturbances render the culprit liable to imprisonment for not more than six days and must be dealt with by a magistrate

In accordance with a system introduced in 1931 and extended in 1936 the legislation of the Netherlands Indies aims at the gradual suppression of penal sanctions the method adopted is that of compelling employers to engage a gradually increasing percentage of their workers under contracts with no penal sanctions

The Coolie Ordinance passed in 1931 made it compulsory for undertakings opened in 1921 or earlier to have not less than 50 per cent of " free " workers in their employment by 1 January 1936 According to the revised text of 1936 this proportion must be not less than 75 per cent on 1 January 1938 and 100 per cent on 1 January 1940 Undertakings opened between 1922 and 1927 must reach a proportion of 25, 40, 50, 75 and 100 per cent on 1 January of the 11th, 13th, 15th, 17th and 19th years of their existence respectively Those opened between 1928 and 1930 must reach a proportion of 50, 75 and 100 per cent by 1 January 1942, 1944 and 1946 respectively Finally, undertakings opened between 1931 and 1941 must reach a proportion of 50 per cent on 1 January 1942

In calculating these percentages undertakings situated within the same labour inspection district or the same part of such a district as defined by the Director of the Labour Office in *Batavia* and belonging to the same person or company will be considered as a single undertaking, provided that on the dates by which the proportion of " free " workers must have reached 50 or 75 per cent for all these undertakings together, it must not be less than 35 or 50 per cent respectively in any one of them Extensions of existing undertakings will be considered as new undertakings if the number of workers they employ exceeds a certain proportion of the total, to be laid down by regulations issued by the Government

In the event of special circumstances arising out of the position or nature of the undertaking, or out of some unforeseen obstacle, the Governor-General or the head of the provincial administration acting by instructions of the Governor-General may at the employer's request

grant certain facilities to an undertaking or group of undertakings, either by extending the time limit or in some other manner

If an employer fails to comply with the prescribed percentages the Director of the Department of Justice may forbid him to continue to engage workers under penal sanctions, and if the employer has not complied with the regulations within three months of that time the Governor-General may automatically cancel the contracts of all workers employed under penal sanctions in the undertaking in question

The provisions concerning the abolition of penal sanctions in the regulations concerning Chinese labour in the tin mines of Banka and Billiton are identical with those contained in the Coolie Ordinance before the 1936 revision According to a statement made by the Government in the Volksraad, however, they will be amended at an early date to bring them into line with the revised Coolie Ordinance of 1936

In *Dutch Guiana*, the offences for which penal sanctions may be applied under the legislation concerning contracts of service may be divided into two groups such breaches of contract as would normally give rise to civil actions, and breaches of discipline

The actions included in the first group are (1) wilful absence from work or from the undertaking, failure to fulfil the stipulations of the contract or legal obligations, (2) refusal or failure to appear at work or at the undertaking at the prescribed date and time or to continue the journey thither, (3) refusal to work, (4) departure or attempted departure from the colony during the period of service

In the first two cases the penalty is a fine not exceeding 50 florins or imprisonment for not more than two months, in the third case a fine of not more than 25 florins or of imprisonment for not more than six weeks, in the fourth a fine of not more than 100 florins or imprisonment for not more than six months

The disciplinary offences for which penal sanctions may be applied are (1) insubordination in word, threat or gesture directed against the employer, the manager or their subordinates, such actions render the worker liable to a fine of not more than 25 florins or imprisonment for not more than six weeks, (2) drunkenness while at work or on duty, idleness, departure from the plantation without a permit from the manager when such a document is legally required, the penalty for these offences is a fine of not more than 25 florins or, for a second offence, imprisonment up to a maximum of six days

All these are considered as minor offences, the worker is not prosecuted unless the offence is reported to the competent authorities within fifteen days of its coming to the notice of the employer or manager of the plantation

The Ordinance of 1911 concerning work in forestry undertakings empowers the employer to inflict fines on a worker guilty of certain offences of omission or commission laid down in the work-book These fines cannot be inflicted for any offence punishable by law The amount of the fine must be specified in the contract and may not exceed 2 50 florins for each offence The total fines imposed on a worker during any quarter may not exceed 10 florins

The Native Labour Code for the *Portuguese Colonies* in Africa makes provision for penal sanctions for a certain number of offences, including breach of contract in the strict sense, disciplinary offences, and certain other acts The first group includes the following acts of omission or commission refusal to work, negligence and lack of diligence, absconding or absence from the place of employment without the employer's per-

mission, except when the worker wishes to lodge a complaint with the local authorities The penalty for such offences is hard labour for a period of not more than one year Workers who leave their place of employment without valid reason and thus fail to fulfil their contract are arrested by the Curator or his representatives or by the administrative authorities acting on their instructions and are detained for trial

The Code also deals with the non-repayment of advances Any Native who concludes a contract of service and refuses both to go to his place of employment and to pay compensation for such refusal to the recruiting agent or employer for the expenses involved in recruiting and to return any advances or other sums received is liable to hard labour for a period of not more than 180 days

The following are considered as disciplinary offences disobedience of orders legally given by the employer fomenting or attempting to foment trouble or indiscipline in work places habitual drunkenness and other vices or immoral acts likely to destroy discipline among the workers or implying a lack of respect for the employer or other persons For such offences the worker may be sentenced to hard labour for not more than one year

The other acts for which penal sanctions may be applied are failure to make good wilful loss or damage caused to the employer or to his property or failure to accept deductions from wages permitted by the authorities, sale of food or similar articles grown or manufactured on the farm or in the undertaking in which the worker is employed, provided that he is unable to prove that the articles were lawfully acquired, theft, wilful damage and other crimes or misdemeanours for which no more severe penalty is prescribed, failure to obey the instructions or orders of the authorities The penalty for these actions is hard labour for not more than one year In addition a penalty of hard labour for not more than 160 days may be inflicted for any infringement of the Code for which no special penalty is prescribed In the case of a second offence the penalty must be not less than two-thirds of the maximum for the offences in question

In addition to these penal sanctions employers are entitled to claim compensation by means of deductions from wages due or from future wages for any expenditure in which they may be involved as a result of workers leaving their employment or committing wilful damage The amount of the deductions may not exceed a certain limit laid down in the Code, nor may they be such that they would imply a renewal of the contract or an extension of the period of employment

§ 2 — Conclusions

The recommendations of the Committee of Experts on Native Labour with regard to penal sanctions are as follows

" The Committee, while recognising that penal sanctions for breaches of written contracts of employment by workers cannot be immediately abolished in all territories, considers that the general trend of Government policy should be towards the mitigation of penal sanctions with a view to their abolition, and that meanwhile, in order to prepare the way for eventual

abolition, the following measures should be taken by the Governments of territories in which such sanctions are prescribed in the law or regulations

"(1) *A clear distinction should be established between*

(a) *Offences, such as common law offences or contraventions of factory, health or safety regulations, which are not, properly speaking, breaches of contractual obligations,*

(b) *Breaches of contract which would normally be regarded as civil offences,*

(c) *Minor breaches of discipline in the undertaking*

' The sanctions for the offences referred to in sub-paragraph (a) *should not, whenever possible, be provided for in the law or regulations relating to contracts*

" Sanctions for the offences mentioned in sub-paragraph (c) *should only take the form of small deductions from wages which should in general not be permitted to be made by the employer, if made by employers, such deductions should be checked and, if necessary, approved by the competent administrative officers, and the resulting amounts should be paid into a fund for the benefit of the workers*

"(2) *In the case of peoples or classes of workers sufficiently evolved to understand, in particular, the binding nature of contracts penal sanctions for breaches of contract should be abolished*

"(3) *Where penal sanctions for breaches of contract are still considered to be necessary, a special jurisdiction and procedure should, where practicable, be set up to deal with such offences, such jurisdiction might take the form of labour courts or magistrates, arbitration boards or the officer of the labour inspectorate*

"(4) *In any case, the competent jurisdiction should be empowered, in the case of first offences and according to the seriousness of the offence, to limit the punishment to a warning, and to impose fines without the alternative of imprisonment*

" Where terms of imprisonment are imposed, offenders should, wherever practicable, be detained in special places of detention

"(5) *Where penal sanctions for breaches of contract are considered necessary as a transitional measure, the competent authorities should examine the possibility of imposing upon employers the obligation to employ increasing percentages of workers whose contracts do not provide for penal sanctions*"

It will be noted that the Committee of Experts did not consider it possible to recommend the immediate general abolition of penal sanctions, but it expressed the view that the policy of Governments should be to attenuate these sanctions with a view to their ultimate abolition and it advocated certain measures for achieving this purpose In order to facilitate the discussion of these suggestions by the Conference, the Office proposes to examine and comment upon them in the following pages First of all, however, it seems desirable to survey briefly the very divergent views put forward as to the expediency and the nature of penal sanctions This survey

will be restricted to penal sanctions for breach of contract in the strict sense, that is the offences classified in the first group at the beginning of this chapter, which were defined by the experts as " breaches of contract which would normally be regarded as civil offences "

Generally speaking, it may be said that the discussions concerning the problem of penal sanctions have been of a pragmatical rather than of a juridical nature It has long been generally agreed that there is no absolute line of demarcation between the field of private law and that of penal law, and that, in given circumstances, the question whether certain obligations should be enforced by penal sanctions or not depends essentially on the degree to which the public conscience has evolved in its demands and scruples in matters of law

The considerations advanced in justification of penal sanctions may be summarised as follows Legal sanctions are of much greater importance as a means of securing compliance with contracts of employment in territories where Native labour is employed than in more advanced countries In the latter, the material existence of the workers depends almost entirely on the wages they earn This economic dependence constitutes a powerful incentive for them to respect the engagements accepted in their contracts If a worker is dismissed he is deprived of his livelihood and very often the position on the labour market in those countries is such that it is not easy for him to find another job An indigenous worker, on the other hand, is usually in a much more independent situation His wages normally represent merely a supplement to the income derived from the Native economic system If he hires out his services it is in order to meet a temporary need for money or to procure certain additional advantages which he is quite prepared to renounce if he finds the work too unpleasant Consequently he feels no necessity for fulfilling his contract, or he feels it only to a very limited extent, this does away with the main guarantee of labour stability which exists in the more advanced countries

In order to meet this situation effective legal sanctions must be employed Civil sanctions cannot be considered adequate The dismissal of the worker hurts the employer and no one else, for the worker will simply return quietly home or take advantage of the difficulties of identification due to the absence of any system of registration of births to offer his services to another employer In view of the shortage of labour in many colonies, the new employer

will generally be only too glad to find an additional worker To sentence the worker to pay damages is also ineffective, for the great majority of the Natives have no individual property from which the amount could be recovered The idea of collecting the damages from the property of the Native community must naturally be rejected as contrary to modern ideas of law If the damages were to be charged against the worker's wages, this would mean that if the sum were a large one the Native would be involved in debt to his employer, which would be equivalent to compelling him to work In certain European countries the legislation makes provision for imprisonment for civil debts Others permit imprisonment for contempt of court when a debtor fails to comply with an order of a court of law Quite apart, however, from the question of whether these measures will achieve their aim when the failure of a worker to pay his debts is due to his insolvency, it may be pointed out that such imprisonment would have exactly the same effect on the Native as imprisonment inflicted directly for breaking his contract The only difference would be that the procedure would have become more complicated and perhaps more difficult for him to understand

While the repression of breach of contract by penal sanctions is essential for practical reasons, it can also be justified on more general grounds It is essential, in the interests of any community, that freely contracted obligations should be respected, and the inculcation of this truth among primitive peoples is of great educative value In this connection one writer, speaking of contracts of employment, has said " To create a system of private law with the knowledge that it can be infringed with impunity is mere hypocrisy " In the absence of any other means of assuring respect for contracts, there is complete justification for having recourse to penal law Moreover, in addition to the moral value of this system, which has just been mentioned, important financial and economic interests are often at stake An employer, especially when he has spent a considerable sum in the recruiting and transport of his workers, must be able to count on their regular services during the period of their engagement and must therefore be protected against breach of contract by irresponsible workers If this were not done, it would be impossible to develop colonial territories, and this would be prejudical to the interests of the Native peoples themselves There is also the risk that an employer who is not protected by law will try to exercise repressive measures on his own initiative

It is also incorrect to say, as has sometimes been alleged, that penal sanctions are inhuman and imply a state of servitude Contracts with penal sanctions are freely accepted by the workers, who are free to leave their employment when the agreed period of service has expired Moreover, for the Native the problem of civil or penal sanctions does not exist because he makes no distinction between civil law and penal law

Against the application of penal law to contracts of employment the following considerations have been put forward Although it is true that there are special difficulties in executing civil law judgments passed on workers for breach of contracts, this cannot be accepted as a sufficient reason for having recourse to penal law The interests which penal sanctions are intended to protect and which are, usually wrongly, identified with the interests of the community or of the Native peoples by no means justify a system which recalls serfdom or slavery The retention of contracts with penal sanctions is intolerable in an age in which the conscience of civilised humanity is practically unanimous in condemning all forms of servitude with the exception of that used as a punishment for unlawful actions The modern conception of individual relationships is particularly shocked by the combination of a long period of contractual employment and penal sanctions—that is, by the fact that human beings can be compelled, under threat of imprisonment, to work for periods of time which are normally beyond their mental grasp at the time when they accept their contracts The substitution of short-term contracts makes a difference of degree, but it does not affect the principle whether the period of engagement be long or short, the worker loses his liberty for the duration of his contract, and such loss is contrary to modern ideas of freedom and human dignity

The use of penal law, far from teaching primitive peoples to work, makes them consider work with aversion Instead of inculcating respect for the sanctity of contracts and teaching them to regard contractual relationships as a higher form of human relationships than that based on custom, penal sanctions lead them to consider their contracts as an instrument of oppression, instead of training them to respect the law, they teach them to despise it As for the allegation that an employer, if not protected by law, might take the law into his own hands, which would obviously be an abusive practice, experience shows that it is just the adoption of a system of penal sanctions that leads to abuses of this kind, because it helps to keep the Native in a state of sub-

jection An employer who is entitled by law to arrest and bring back to the undertaking a worker who has deserted finds himself endowed with authority which can easily lead him to be guilty of excesses in dealing with his workers This overwhelming superiority of the employer and his staff creates a spirit of despair amongst the workers which, in certain circumstances, may lead them to criminal action, such as attempts on the life of the employer or his subordinates

There is another point to be considered If it is desired to create healthy relationships between employers and indigenous workers, it is essential to provide satisfactory conditions of employment In territories where Native labour is employed, just as in other countries, good conditions are the best guarantee of labour stability The system of penal sanctions, however, far from promoting the development of such conditions, constitutes an obstacle to them Undertakings which know that they can have recourse to penal law are inclined to attach insufficient importance to the conditions of employment they offer The unfavourable influence which penal sanctions combined with long-term contracts may have on wage rates was clearly brought out by the investigations made in Malaya in 1910 and in Assam in 1921 and 1922 when that form of labour still existed in those territories

Whatever weight may be attached to the arguments on either side—and the International Labour Office cannot do more than summarise them here—it is a fact that, in quite a number of territories in which penal sanctions were permitted until recently, they have now been finally abolished or measures have been taken for doing away with them in the near future In British India the system disappeared with the repeal in 1926 of the Act of 1859 concerning breach of contract and the repeal of certain local regulations a few years later, before these measures were taken the Government had prohibited the engagement of workers under penal sanctions for employment abroad In Ceylon, penal sanctions were abolished in 1920 they were likewise abolished in Malaya in 1920 as far as Chinese and Indian workers were concerned and in 1932 for Javanese workers, they disappeared in Hong Kong in 1923 and in Sarawak in 1935 The position in the Netherlands Indies is that penal sanctions were abolished in Java sixty years ago, they do not exist for workers belonging to the indigenous population in the Outer Provinces, in the case of labour imported to these Provinces the revision of the legislation in 1931 and 1936 will mean that the great majority of undertakings will abandon

penal sanctions between 1940 and 1946 In the case of the African colonies the system of penal sanctions was abolished in the Gold Coast in 1931, in Gambia in 1932 and in Nigeria in 1933 In Sierra Leone the number of offences for which such sanctions could be applied was reduced in 1934 to one, namely, desertion during the journey to the place of employment The same movement is being followed in the British West Indies, where penal sanctions were abolished in Grenada in 1936 and in Barbados in 1937

In view of this very clear tendency on the part of national legislation to abolish the system of penal sanctions—a tendency which is in accordance with the development of labour legislation in European countries—the Office feels it essential to propose to the Conference that Governments be consulted as to the principle of abolition and as to the time-limits within which it should be applied The Office has therefore included in the draft list of points on which Governments should be consulted the question whether they consider that penal sanctions should be abolished (*a*) immediately, (*b*) on the expiry of a period to be fixed in the proposed international regulations, (*c*) progressively and as soon as possible

This first point, as drafted by the Office, calls for two remarks In the first place the Office has tried to define the forms of breach of contract which should no longer be dealt with under penal law, and in the second place it proposes to extend the scope of the provisions concerning penal sanctions to every form of contract of employment The reason for this second proposal is that the summary of the legislation given above shows that in most territories the use of penal sanctions is not restricted to contracts which must be drawn up in writing on account of their duration On the contrary, these sanctions are applied to all contracts, irrespective of their duration or their form Similarly, when penal sanctions are abolished, this is always done not simply in respect of long-term contracts but for all contracts irrespective of their form and duration It would, indeed, be inconceivable to abolish penal sanctions for long-term contracts and leave them in force for verbal contracts The Office has therefore felt obliged, although referring in the other points suggested for the consultation of Governments to contracts that must necessarily be drawn up in writing, to propose that the point dealing with penal sanctions be drafted in such a way as to elicit a reply covering all contracts of employment, no matter what their duration or their form

After the question concerning the principle of the abolition of penal sanctions, the Office has included in the draft list a number

of points suggesting different methods of restricting the system of penal sanctions and paving the way for its abolition These points are based in part on the recommendations made in this connection by the Committee of Experts and in part on ideas suggested by the summary of the law and practice in the different territories

If penal sanctions cannot immediately be abolished everywhere —and this was the view taken by the Committee of Experts—are there special circumstances which might make their immediate abolition feasible in certain cases ? The Committee referred to one—the case of " peoples or classes of workers sufficiently evolved to understand, in particular, the binding nature of contracts ", in this case the Committee expressed the opinion that penal sanctions should be abolished This suggestion will no doubt command general approval, but it appears to the Office to be more suitable to include it in the list of points in the form of precise proposals rather than as a general principle

For instance, a class of workers for whom penal sanctions might be abolished immediately is that of workers who accept a re-engagement contract This case was not expressly mèntioned by the Committee of Experts, but the Office feels that it would be desirable to draw the attention of Governments to a measure of this kind, which was introduced in the Netherlands Indies in 1936 with the approval of authorities who offer no opposition to the application of penal sanctions during the initial contract These authorities consider that the main reason for the application of penal law to contracts is the need to accustom the Native to regular work and to teach him to respect contracts, and they therefore felt that after a certain time this education could be held to be complete, in which case penal sanctions became superfluous That point would seem to be reached when the first period of service comes to an end and the second begins In addition to the fact that workers who have completed a first period of service have already a certain experience of employment under contract, it should further be considered that, provided that the workers are entirely free to accept or reject a further engagement, the fact that they do accept a new contract is presumptive proof that they intend to respect the obligations arising out of it Moreover, the abolition of penal sanctions for re-engagement contracts would seem to take account of the employer's interests, since he may generally be expected to have recovered the cost of recruiting and transport by the time the initial period of service expires Obviously a

suggestion of this kind could apply only to re-engagement contracts concluded on the expiry of an initial contract which was necessarily drawn up in writing It is in this sense that the Office has drafted the point for consulting Governments as to the possibility of the immediate abolition of penal sanctions for re-engagement contracts

Another possibility of abolishing penal sanctions was considered by the Committee of Experts this is a system of the kind adopted by the Government of the Netherlands Indies in 1931 and extended in 1936 As was explained in the preceding summary of the legislation of the Netherlands Indies, the system is one under which employers are required to engage an increasing percentage of their workers under contracts to which no penal sanctions are attached It would presumably not be possible to suggest definite percentages for the general application of this system, but it seems desirable to consult Governments as to the possibility of laying down the principle of such a method in the text of the proposed international regulations

In another of its suggestions, the Committee of Experts had in mind the practice of certain colonies in which special procedures have been introduced for dealing with breaches of contracts of employment These procedures involve either granting discretionary powers to the competent judicial bodies to apply civil law to certain offences, or else submitting all offences to a special court Any international rule on this subject must necessarily be of a very general character, but the Office considered that the idea should be mentioned in the draft list of points which is submitted to the Conference

The Committee of Experts wished to restrict as far as possible the cases in which workers are imprisoned for breach of contract, and it is therefore suggested that the competent jurisdiction should be empowered in certain cases to limit the punishment to a warning and to impose fines without the alternative of imprisonment It further proposed that where terms of imprisonment were imposed, the offenders should, wherever possible, be detained in special places of detention It is easy to understand why the Committee made those two suggestions if a person sentenced for mere breach of contract is brought into contact with criminals in prison, the consequences of the punishment are likely to be much more serious than the offence It does not seem necessary to comment at length on this proposal measures of this kind are found in every modern system of penal legislation, and the Office therefore proposes that Governments should be consulted on this point

The summary of the law and practice given above shows that, in addition to penal sanctions in the strict sense of the term, certain laws provide for what may be called indirect penal sanctions, that is to say, they provide for the punishment of workers who receive a bonus or an advance when they are engaged and subsequently fail both to perform the work stipulated in the contract and to refund the sums so received A very clear definition of this type of offence is given in Section 351 of the Native Labour Code of the Portuguese Colonies in Africa, which provides that " if a Native, after entering into a contract, refuses to report himself at the place of employment, he shall be bound to repay to the recruiting agent or employer any advances made and any sums received, and to compensate them for the expense which he has entailed to them " A Native who fails to comply with this obligation is liable to be punished Penalties for this type of offence, which is generally known as non-repayment of advances, are also laid down in the Decree of 2 June 1932 which applies to all the French Colonies

It will be noted that the offence in question consists of two elements which must exist simultaneously before the Native can be condemned The first is failure to perform the work for which he was engaged—an offence which is exactly the same as those mentioned in the preceding pages in connection with the abolition of penal sanctions The second element, which is failure to return certain sums of money, cannot under any circumstances be classified along with the types of breach of contract referred to above To the breach of contract is, therefore, added an element which in itself has nothing to do with the obligations arising out of the contract of employment In these circumstances, it may be suggested that the combination of these two elements makes the offence of non-repayment of advances a special offence which cannot be assimilated to simple breach of contract from the point of view of the abolition of penal sanctions This view, however, does not seem to be correct A worker who is obliged to refund to his employer any bonus, advances, etc , which he may have received, has generally no resources beyond the wages he may earn by carrying out his contract This means that in most cases the obligation to refund such bonus or advances involves compulsion to carry out his contract Section 356 of the Portuguese Native Labour Code indicates sufficiently clearly that there is nothing improbable in this hypothesis, it was found necessary in that section to stipulate that the total amount of any sums to be repaid to an employer

should not be such as to entail the renewal of the contract of employment or the extension of its duration It was thus recognised that to load a Native worker with debt may amount to compulsion to work The danger of such compulsion would seem to be particularly great when the legislation considers the non-repayment of advances as a misdemeanour, for in territories in which Native labour is employed the payment of bonuses and advances of wages is one of the most usual means of inducing Natives to enter into contracts of employment

It therefore seems that the punishment under the criminal law of the offence of non-repayment of advances is in no respect essentially different in its effects from penal sanctions for breach of contract It may therefore be concluded that any decision that may be taken to abolish penal sanctions should extend to the offence in question, with the reservation that the non-repayment of advances should remain subject to penal law whenever it is definitely fraudulent in character There can, however, be no question of fraud unless the worker intended, when he accepted the contract and the advances, to default both in respect of the fulfilment of the contract and of the repayment of the sums paid to him by the recruiter or employer The Office considers, therefore, that it should submit this question to the Conference by including in the draft list of points for the consultation of Governments an item concerning the abolition of penal sanctions for non-repayment of advances, except in cases where it is proved to the satisfaction of the Court that the offence was committed with the intention to defraud the employer

Finally, mention must be made of a question which was raised by the Committee of Experts in one of its recommendations—the question of the fines which an employer may inflict on his workers The regulations in force in the different territories show that the offences for which fines may be imposed can be divided into two groups

(*a*) Offences against regulations issued by the authorities

(*b*) Breaches of the provisions of the contract or of rules drawn up by the employer to ensure the smooth working of the undertaking

Examples of the first group may be found in some of the British Colonies In Northern Rhodesia, for example, the managers of mines may be empowered to impose fines for offences against the

mining regulations In the Mandated Territory of Tanganyika, the employers of agricultural labour are entitled to fine workers for breaches of the health and safety regulations, but only if there is no magistrate within a distance of three miles In such cases an employer who makes use of these powers is directly contributing to ensuring respect for the regulations issued by the authorities, and is therefore acting more or less as an agent of the judicial authorities This probably explains why the product of fines inflicted in this way in Northern Rhodesia must be paid to the Treasury

Offences of the second group may differ in their nature according to the provisions of the contract and the rules drawn up by the employer Sometimes the national legislation is silent on the possibility of inflicting fines for such offences In that case the contracting parties must generally be considered as being free to decide by agreement whether the employer will be entitled to fine the worker or not, and, if so, for what offences and within what limits In other cases fines are entirely prohibited by law This is the case, for example, in the Netherlands Indies with regard to workers employed under penal sanction contracts In yet other cases—and this applies to the majority of countries—the law merely lays down certain guarantees against abuses fixing the maximum amount of the fine or providing for a record being kept, for supervision or for the payment of the fines into a welfare fund for the workers

In regard to offences of the second type, the Committee of Experts considered that as a general rule an employer should not be permitted to impose fines, if they are permitted to do so, the fines should be checked and, if necessary, approved by the competent administrative officers, and the resulting amounts should be paid into a fund for the benefit of the workers

The Office has considered very carefully whether it should suggest the consultation of the Governments on these proposals with a view to their inclusion in any international regulations that may be drafted concerning indigenous contracts of employment The question seems, however, to be one which goes beyond the scope of the regulation of contracts and which could more appropriately be considered in connection with the protection of the wages of indigenous workers The Office has therefore refrained from including a point dealing with the question of fines in the proposed list of points

CONSULTATION OF GOVERNMENTS

Article 6 (4) of the Standing Orders of the International Labour Conference, in pursuance of which this Report is prepared, provides that the Report "shall fix as completely as possible the points upon which the Governments are to be consulted" To give effect to this provision, the International Labour Office has prepared the following draft list of points upon which it is suggested that the Conference should instruct the Office to consult the Governments

I — FORM OF THE INTERNATIONAL REGULATIONS

1. A Draft Convention concerning the regulation of contracts of employment of indigenous workers.

II. — SCOPE AND DEFINITIONS

2 Application to contracts of employment by which indigenous workers enter the service of an employer

(*a*) as manual workers,

(*b*) for remuneration in any form whatsoever; and

(*c*) otherwise than as apprentices

3 Definition of "employer" as including any individual, company or association, whether non-indigenous or indigenous.

4 Responsibility for performance of any contract of employment entered into with any indigenous worker by a sub-contractor, jobber, or other agent of an employer to rest with the employer

5. Definition of "indigenous workers" as including "workers belonging to or assimilated to the indigenous populations of the dependent territories of Members of the Organisation and workers belonging to or assimilated to the dependent indigenous populations of the home territories of Members of the Organisation".

III. — CONTRACTS REQUIRED TO BE IN WRITING

6 Contracts of employment of workers[1] to be required to be in writing

(*a*) when concluded for a period of, or exceeding, a minimum period to be fixed by law or regulations, such minimum period not to exceed

(i) six months or a number of working days equivalent to six months, or

(ii) any other period;

(*b*) when the conditions of employment stipulated in the contract differ materially from those customary in the district of employment for similar work,

(*c*) in any other cases.

7. Worker to have right to claim performance of contractual obligations by employer, or damages in lieu thereof, where employer wilfully or by negligence omits to conclude in writing a contract required to be in writing.

IV. — CONTENTS OF CONTRACTS

8. Every contract required to be in writing to contain all particulars necessary, in conjunction with the provisions of the law or regulations, to define the rights and obligations of the parties, and to include more especially

(*a*) name of employer, of undertaking and of place of employment;

(*b*) worker's name, place of origin and other particulars necessary for identification,

(*c*) nature of employment,

(*d*) duration of employment and how calculated;

(*e*) wages: rates and how calculated, manner and periods of payment, advances and manner of repayment;

(*f*) repatriation conditions,

(*g*) any special conditions of the contract;

(*h*) any other particulars

[1] Wherever the word "workers" or "worker" is used in points 6-48 it means "indigenous workers" or "indigenous worker" as defined in point 5

V. — ADMINISTRATIVE SUPERVISION OF CONCLUSION OF CONTRACTS

9. Every contract required to be in writing to be concluded in the presence of, and approved by, a duly accredited public officer

10. Such public officer to be bound to ascertain, before approving the contract, that the worker has given his consent thereto freely and not under coercion or undue influence or as a result of error or misrepresentation

11. Such public officer to be bound also to ascertain, before approving the contract, that

(*a*) the contract is in due legal form,

(*b*) the terms of the contract are in accordance with the law or regulations;

(*c*) the worker understands the contract,

(*d*) the provisions of the law or regulations relating to medical examination have been complied with;

(*e*) the worker is not bound by a previous engagement,

(*f*) any other points.

12. Every contract required to be in writing to be registered by the competent authority.

13. Worker to receive copy of contract or an equivalent document, e g. work-book.

VI. — MEDICAL EXAMINATION

14. As a general rule, every worker to be medically examined before conclusion of a contract required to be in writing and a medical certificate issued

15. Where it is not possible for the worker to be medically examined before the conclusion of the contract, he should be so examined at the earliest possible opportunity.

16. If the worker has not been medically examined before the conclusion of the contract, the public officer who approves the contract to endorse the contract to this effect

17. Exception to requirement of medical examination in case of contracts concluded for agricultural work in the vicinity of the workers' homes

VII — SPECIAL PROVISIONS FOR CONCLUSION OF CONTRACTS BY WOMEN, YOUNG PERSONS AND CHILDREN

18. Law or regulations to make special provision for conditions under which women, young persons and children may conclude contracts required to be in writing, including provision that

(*a*) women not to be permitted to conclude contracts except when accompanying, and for employment with, their husbands or adult male relatives, or for employment as domestic servants;

(*b*) young persons between apparent ages to be fixed by the law or regulations not to be permitted to conclude contracts except, in the case of female young persons, for employment in domestic service or as nurses, or, if they are with their families, on light agricultural work approved by the competent authority, and, in the case of male young persons, for employment on light work approved by the competent authority;

(*c*) children under an apparent minimum age to be fixed by the law or regulations not to be permitted to conclude contracts.

VIII — LENGTH OF CONTRACTS

19 Maximum length of contracts required to be in writing to be

(*a*) prescribed by law or regulations, or

(*b*) specified in the international regulations.

20. If to be specified in the international regulations, the maximum length of contracts to be

(*a*) fixed separately for foreign and home contracts, for example,

(i) except for continental Africa, foreign contracts 24 or 36 months, home contracts 12 months,

(ii) continental Africa, all contracts 12 months, or

(*b*) fixed separately for workers accompanied by their families and for workers not accompanied by their families, for example,

(i) workers accompanied by their families, 24 or 36 months,

(ii) workers not accompanied by their families, 12 months, or

(*c*) fixed in any other way and with any other maxima

21. To be open to competent authority to exempt from provisions fixing maximum length of contracts any contracts of employment of agricultural workers which are partly tenancy contracts

IX. — TRANSFER OF CONTRACTS

22 Transfer of a contract from one employer to another or from one undertaking to another to be permitted only with consent of worker, endorsed by a public officer, and to be subject to same administrative supervision as conclusion of a new contract

X — TERMINATION OF CONTRACTS

23 Cases and conditions in which contracts required to be in writing are to be terminable, otherwise than on expiry of the period for which the contract is concluded, to be prescribed by the law or regulations, and to include such termination by reason of the inability of the employer or of the worker to fulfil the contract, by mutual agreement between the parties, and on the application of either of the parties.

24. Termination of contracts, otherwise than on expiry of period for which the contract is concluded, to be subject in each case to approval of the competent authority

25. Conditions under which contracts to be so terminable by reason of

(*a*) inability of employer to fulfil the contract,

(*b*) inability of worker to fulfil the contract owing to sickness or accident,

to include provisions safeguarding the right of the worker to wages earned and deferred pay, and his right to repatriation

26 Conditions under which contracts to be so terminated by mutual agreement between the parties to include provision that

(*a*) worker not to lose his right to repatriation unless the agreement otherwise provides, or

(*b*) worker not to lose his right to repatriation,

and the competent authority to ensure that the agreement is voluntary and that all monetary liabilities have been settled

27. Conditions under which contracts to be so terminable on the application of either of the parties to include provisions

(*a*) fixing the period of notice of termination of the contract,

(*b*) prescribing equitable methods of settlement of the monetary and other questions arising from such termination, including the question of the repatriation of the worker.

28. Contracts required to be in writing to be terminated in all cases by the death of the worker.

XI. — REPATRIATION

29 Every worker serving under a contract required to be in writing who was brought to the place of employment by the employer or anyone acting on his behalf, and the worker's family if authorised to accompany him to the place of employment, to have the right to be repatriated to his place of engagement or of origin without expense to the worker:

(*a*) on the expiry of the contract;

(*b*) on termination of the contract by reason of the inability of the employer to fulfil the contract;

(*c*) on termination of the contract by reason of the inability of the worker to fulfil the contract owing to sickness or accident;

(*d*) on termination of the contract by mutual agreement,

(i) unless the agreement otherwise provides, or

(ii) without this condition,

(*e*) on termination of the contract on the application of either party

(i) unless the competent authority otherwise decides, or

(ii) without this condition;

(*f*) in any other circumstances.

30 Permissive exception to right to repatriation if worker, on expiry of contract, has been settled, by his will and consent, at or near place of employment.

31. To be open to law or regulations to determine period on expiry of which, if he has not availed himself of right to repatriation, worker may be deemed to have renounced that right.

32. Worker's family, if authorised to be with him at place of employment, to have right to repatriation in event of his death

33. Expenses of maintenance of worker and of his family between expiry of the contract and date of repatriation to be borne by employer if repatriation delayed otherwise than by worker's own choice.

34. Cost of repatriation to include travelling expenses and subsistence during journey.

35. Application to return journey of repatriated workers and their families of the provisions laid down in Article 19 of the Recruiting of Indigenous Workers Convention (1936) for the journey of recruited workers to the place of employment.

36. Competent authority to ensure that everything necessary for welfare of repatriated workers during journey is provided

37. Contractual obligations regarding the repatriation of the worker and his family to be assumed by the competent authority in the event of the inability of the employer to perform such obligations.

XII. — RE-ENGAGEMENT CONTRACTS

38. Maximum length of re-engagement contracts to be

(*a*) prescribed by law or regulations, provided that the maximum length fixed is shorter than the maximum length permitted for new contracts, or

(*b*) specified in the international regulations.

39. If to be specified in the international regulations, the maximum length of re-engagement contracts to be fixed at, for example,

(i) 6 months, or

(ii) 12 months for workers accompanied by families, 6 months for other workers, or

(iii) other maxima.

40. Conditions for conclusion of re-engagement contracts to include principle that, whenever practicable and desirable, worker not accompanied by his family should not be permitted to conclude re-engagement contract unless he has returned to his home after the expiry of the previous contract

41. Re-engagement contracts to be otherwise subject to the same provisions as other contracts, except the provisions relating to medical examination.

XIII. — PENAL SANCTIONS

42. Criminal penalties for breach of contract on the part of worker by

(*a*) refusing or failing to commence the service stipulated in the contract,

(*b*) refusing or failing to perform the service stipulated in the contract,

(*c*) absenting himself without valid reason or without permission,

(*d*) deserting,

(*e*) neglect of duty,

(*f*) lack of diligence,

to be abolished in respect of all contracts, whether required to be in writing or not, and the said offences to be actionable only by civil process

(*a*) immediately, or

(*b*) on the expiry of a period to be fixed in the international regulations, or

(*c*) progressively and as soon as possible.

43 If not generally abolished immediately, such criminal penalties to be abolished immediately in respect of

(*a*) all re-engagement contracts entered into on the expiry of a contract required to be in writing;

(*b*) any other cases.

44. If such criminal penalties are not generally abolished immediately, employers to be obliged to employ increasing percentages of workers under other conditions than contracts providing for such criminal penalties.

45. If such criminal penalties are not generally abolished immediately, the said breaches of contract to be dealt with, where practicable, by a special jurisdiction and procedure, with the object of promoting the transition to the system of judging such breaches of contract by civil process.

46. Competent jurisdiction in cases of breach of contract to be empowered, at its discretion, to suspend the execution of the sentence or to limit such sentence to a warning.

47. Any other provisions relating to criminal penalties for breach of contract.

48. Abolition of criminal penalties for breach of contract to include abolition of criminal penalties for non-repayment by worker, who has committed a breach of contract, of any moneys or goods received from the recruiter or employer as a bonus or an advance of wages in respect of the engagement, or of travelling or other expenses incurred by the recruiter or employer in connection with the engagement, except when it is proved to the satisfaction of the competent jurisdiction that the non-repayment is the result of an intention on the part of the worker to defraud the recruiter or employer.

SUPPLEMENTARY RECOMMENDATION

49. Whenever possible, concise summaries of law or regulations relating to written contracts of employment of indigenous workers to be printed in official languages of territories concerned and in a language known to the workers, and to be issued to employers and workers.

APPENDICES

APPENDIX I

Reference has been made in the several chapters of this Report to the suggestions of the Committee of Experts on Native Labour. The full text of these suggestions is given below

It will be observed that practically all the principles formulated by the Committee of Experts have been mentioned in the preceding chapters and are covered by the draft list of points for the consultation of Governments There are, however, two exceptions which require a word of explanation, i e paragraphs (2) and (3) of section I The Office has not included the suggestion made in paragraph (2) in the list of points for two reasons (*a*) the matter is dealt with, so far as concerns recruited workers, in Article 24 of the Recruiting of Indigenous Workers Convention, (*b*) the Committee of Experts, in the footnote to the paragraph, expressed the view that the provision might also be applied in the case of verbal contracts, and it would therefore seem desirable to leave the question for subsequent treatment as one affecting all migrant indigenous workers As regards paragraph (3), the Office felt that the principle was not suitable for inclusion, in such general terms, in the proposed international regulations, and that the proper time to deal with the suggestions contained in the principle would be when the conditions of employment of indigenous workers are studied

TEXT OF THE PRINCIPLES CONCERNING WRITTEN CONTRACTS OF EMPLOYMENT, ADOPTED BY THE COMMITTEE OF EXPERTS ON NATIVE LABOUR

I — General Provisions regarding the Regulation of Written Contracts of Employment

(1) The conditions under which written contracts of employment may be concluded between any employer and any worker should be prescribed by law or regulations, and should include the conditions set out in the following principles

(2) No worker should be permitted to enter into a written contract, as hereinafter provided, for employment in a territory under a different administration from that of his home territory, except in virtue of agreements stipulated between the competent authorities of the two territories or unless the competent authorities of the home territory have satisfied themselves that the conditions of employment offered to the workers in the other territory are in the workers' interests [1]

(3) In addition to the conditions set out in the following principles, the law or regulations relating to written contracts of employment should also prescribe the conditions under which the employment is to be permitted, as for example, in respect of the necessary measures of habituation to the work and to the differences in food, climate and other living conditions, hours of work, rest days and holidays, wages, deferred pay, advances of wages, and workmen's compensation for accidents or occupational diseases, as well as medical assistance in cases of sickness or accident, food, living accommodation, and repatriation for both the worker and his family

(4) Whenever possible, concise summaries of these laws and regulations should be printed in the official languages of the territories concerned and in a language known to the workers, and issued to employers and workers

II — Contracts required to be in Writing

All contracts of employment should be required to be in writing

(*a*) When the contract is concluded for a maximum period to be fixed by the competent authorities but which should in no case exceed

---

[1] This provision might also be applied in the case of verbal contracts

six months or such number of working days as may be fixed by the competent authorities as being equivalent to six months,

(*b*) When the conditions of employment provided for in the contract involve material exceptions from the conditions customary in the district of employment for similar work,

(*c*) In such other cases as may be specified by the law or regulations

III — Conditions of the Validity of Written Contracts

(1) *Administrative approval* — Where a contract is required to be in writing, it should be concluded in the presence of, and approved by, a public officer duly accredited by the competent authority for that purpose, who should be bound, before approving the contract, to ascertain, *inter alia*

(*a*) That the contract is drawn up in due form of law,

(*b*) That the terms of the contract are in accordance with the requirements of the law or regulations,

(*c*) That the worker declares that he is not bound by a previous engagement,

(*d*) That the worker understands the terms of the contract and their binding nature,

(*e*) That the worker has given his consent to the terms of the contract without coercion or undue influence,

(*f*) That the worker has been medically examined and a medical certificate issued attesting that he is free from infectious disease and that he is fit to perform the work on which he is to be employed, if it has not been possible for the worker to be medically examined, the officer should endorse the contract to this effect, and state that the employer should have the worker so examined at the earliest possible opportunity

In approving the contract, the said public officer should certify that he has personally verified the above points

(2) *Registration of the contract* — Every written contract should be registered by or deposited with the competent authority, and a copy of the contract or an equivalent document enabling him to prove the obligations contracted should be delivered to the worker, whenever possible and in all appropriate cases this document should take the form of a work-book in which should be entered particulars of the worker, the employer, and the essential conditions of the employment, together with any other particulars that may be provided for by the competent authorities

IV — Contents of Written Contracts

Written contracts should contain all particulars that may be necessary, in conjunction with the relevant provisions of the laws and regulations, to define the rights and obligations of the parties, and in particular should include the employer's name, the place of employment, the worker's name, his place of origin and such other particulars as are

necessary for his identification, the nature of the employment, the duration of the employment and how calculated, the rates of wages and how calculated and the manner and periods of payment, the advances of wages (if any) and the manner of repayment, repatriation and any other special conditions of the contract

V — Persons permitted to engage for Service under Written Contracts

(1) The law or regulations should determine the classes of persons who may not be permitted to engage for service under written contracts of employment

(2) Young persons who are apparently under a minimum age to be prescribed by the law or regulations should not be permitted to engage for service under a written contract of employment In applying this provision account should be taken, *inter alia*, of sex [1], the nature of the employment and the physical development of the populations concerned

VI — Duration of Written Contracts

The maximum period of service that may be stipulated in written contracts of employment should be prescribed by law or regulations This period should be as short as possible [2]

VII — Re-engagement Contracts

(1) The law or regulations should prescribe the special conditions under which workers should be permitted to conclude written re-engagement contracts, having regard in particular to the desirability of allowing workers whose families have not accompanied them to the place of employment to return to their homes on the expiry of any period of service

(2) The maximum period of service that may be stipulated in written re-engagement contracts should be shorter than the maximum period permitted in original contracts

(3) The conclusion of re-engagement contracts should be subject to the same essential guarantees as the conclusion of original contracts, particularly in order to ensure that the worker has freely consented thereto

---

[1] While not desiring to embody it in a principle, the Committee wishes to record its opinion that young girls should not be employed otherwise than in domestic service or as nurses, or, if they are with their families, in light agricultural work, and that the employment of juveniles should be restricted to suitable classes of work under appropriate conditions

[2] Without attempting to lay down any general fixed maximum, the Committee considers it desirable that contracts for employment in another territory or involving a journey overseas of any duration should not exceed 36 months (12 months in the case of continental Africa) and that contracts for employment within the worker's home territory should not exceed a period of 12 months

VIII — Transfer of Written Contracts

No written contract of employment should be transferred from one employer to another without the consent of the worker concerned This consent should be endorsed on the contract by a public officer duly accredited by the competent authority The transfer should be subject to the same essential guarantees as the conclusion of the contract

IX — Rights of the Worker where the Employer omits to conclude the Contract in Writing

Where a contract in writing is required by law and an employer wilfully or by negligence omits to conclude such a contract, the worker should nevertheless be entitled to claim enforcement of the contractual obligations binding on the employer, or damages in lieu thereof, without prejudice to any penalties to which the employer may also be liable

X — Termination of Written Contracts [1]

(1) The termination of written contracts of employment otherwise than at the expiry of the period of service stipulated in the contract should only be permitted in the cases and under the conditions prescribed in the law or regulations and with the approval of the competent authorities in each particular case

(2) Where a contract is so terminated by reason of the inability of the employer to fulfil the contract, the competent authorities should ensure that the worker does not suffer loss of wages earned or deferred pay, or of his right to repatriation

(3) Where a contract is so terminated owing to sickness or accident rendering the worker unable to fulfil the contract, the worker should not be liable to loss of wages earned or deferred pay or of his right to repatriation

(4) Where a contract is so terminated by mutual agreement between the parties the competent authorities should ensure that the agreement is voluntary on both sides, that all monetary liabilities have been settled, and that the worker does not lose his right to repatriation, unless the agreement otherwise provides

(5) Written contracts of employment should also be terminable, otherwise than at the expiry of the period of service stipulated in the contract, on the application of either of the parties, but only in such special circumstances and for such reasons as may be provided for in

---

[1] Mr Gohr and Mr Pollera were not able to accept the provisions in this section which provide for the permission or approval of the competent authorities for the termination of contracts Not only do these provisions exceed the powers of the administration in some colonies, but they appear to Mr Gohr and Mr Pollera to be based on a misunderstanding of the principles which, in some colonies, determine the competence of the judiciary and the executive respectively

the law or regulations In such cases, the competent authorities should ensure an equitable settlement of the questions arising out of the termination of the contract, more particularly in respect of the obligation to repatriate the worker

XI — Repatriation

(1) The law or regulations should provide that every written contract of employment concluded with a worker who has been brought to the place of employment by the employer or his agents or by a recruiting organisation acting on behalf of the employer should stipulate the right of the worker, and of his family if they are with him at the place of employment in virtue of an authorisation, to be repatriated to his village of origin without expense to the worker [1]

(*a*) On the expiry of the period of service stipulated in the current contract,

(*b*) If the contract is terminated by reason of the failure of the employer to fulfil the contract,

(*c*) If the contract is terminated by reason of the failure of the worker, owing to sickness or accident, to fulfil the contract,

(*d*) If the contract is terminated by mutual agreement between the parties, unless the agreement otherwise provides,

(*e*) If the contract is terminated on the application of either party, unless the competent authority decides otherwise

In exception to the above principles the law or regulations may provide that if the worker, on the expiry of his period of employment, has been settled at or near the place of employment, he should not be entitled to repatriation without expense to himself

(2) Where a worker is entitled to repatriation without expense to himself, and the repatriation is delayed otherwise than by the worker's own choice, the expenses of his maintenance from the date of the termination of the contract until the date of repatriation and the expenses of the maintenance of his family, if they have been authorised to be with him at the place of work, should be borne by the employer

(3) It should be open to the law or regulations to determine the period on the expiry of which the worker, if he has not availed himself of his right to repatriation without expense to himself, may be deemed to have renounced that right

(4) It should be open to the law or regulations to determine the circumstances in which it should be compulsory for the worker to avail himself of his right to repatriation without expense to himself

(5) In the event of the worker's death, his family, if they have been authorised to be with him at the place of work should be entitled to repatriation without expense to themselves

(6) The cost of repatriation should include travelling expenses and subsistence during the journey

---

[1] Major Cooke dissented from the acceptance of this principle in its present form as he was of opinion that it would adversely affect voluntary labour and seriously disturb existing wage rates in South Africa He felt that as a necessary preliminary its economic effects would require the closest examination by the Union Government

(7) The principles adopted by the Committee in regard to travelling expenses, subsistence, transport, journeys on foot, and conveyers for the journey of recruited workers to the place of employment should apply, *mutatis mutandis*, to the return journey of repatriated workers and their families

XII — Penal Sanctions

The Committee, while recognising that penal sanctions for breaches of written contracts of employment by workers cannot be immediately abolished in all territories, considers that the general trend of Government policy should be towards the mitigation of penal sanctions with a view to their abolition, and that meanwhile, in order to prepare the way for eventual abolition, the following measures should be taken by the Governments of territories in which such sanctions are prescribed in the law or regulations

(1) A clear distinction should be established between

(*a*) Offences, such as common law offences or contraventions of factory, health or safety regulations, which are not, properly speaking, breaches of contractual obligations,

(*b*) Breaches of contract which would normally be regarded as civil offences,

(*c*) Minor breaches of discipline in the undertaking

The sanctions for the offences referred to in sub-paragraph (*a*) should not, whenever possible, be provided for in the law or regulations relating to contracts

Sanctions for the offences mentioned in sub-paragraph (*c*) should only take the form of small deductions from wages which should in general not be permitted to be made by the employer, if made by employers, such deductions should be checked and, if necessary, approved by the competent administrative officers, and the resulting amounts should be paid into a fund for the benefit of the workers

(2) In the case of peoples or classes of workers sufficiently evolved to understand, in particular, the binding nature of contracts, penal sanctions for breaches of contract should be abolished

(3) Where penal sanctions for breaches of contract are still considered to be necessary, a special jurisdiction and procedure should, where practicable, be set up to deal with such offences, such jurisdiction might take the form of labour courts or magistrates, arbitration boards, or the officers of the labour inspectorate

(4) In any case, the competent jurisdiction should be empowered, in the case of first offences and according to the seriousness of the offence, to limit the punishment to a warning, and to impose fines without the alternative of imprisonment

Where terms of imprisonment are imposed, offenders should, wherever practicable, be detained in special places of detention

(5) Where penal sanctions for breaches of contract are considered necessary as a transitional measure, the competent authorities should examine the possibility of imposing upon employers the obligation to employ increasing percentages of workers whose contracts do not provide for penal sanctions

APPENDIX II

LIST OF THE MOST IMPORTANT LEGISLATIVE TEXTS RELATING TO CONTRACTS OF EMPLOYMENT OF INDIGENOUS WORKERS [1]

INTERNATIONAL AND INTER-TERRITORIAL

Angola—San Tome and Principe

Colonial legislative Order No 108 of 19 June 1926, to approve the *modus vivendi* concerning Native labour, concluded between the Governments of Angola and San Tome and Principe, signed at Loanda 28 April 1926 (*D G* No 137 of 28 June 1926) [2]

Mozambique—Angola — Cape Verde—San Tome and Principe

Decree No 27063 of 2 October 1936 to amend certain provisions of the *modus vivendi* concerning Native labour, concluded by the Colonies of Mozambique, Angola and Cape Verde with the Colony of San Tome and Principe and to prescribe other measures concerning the employment of agricultural workers in the latter colony (*D G* No 232 of 2 October 1936)

Mozambique—San Tome and Principe

Decree No 11491 of 9 March 1926 to approve the *modus vivendi* concerning Native labour, concluded between the Colonies of Mozambique and San Tome and Principe (*D G* No 49 of 9 March 1926)

Portugal—South Africa

Convention of 11 September 1928 to regulate the introduction into the Province of the Transvaal of Native Labour from the Colony of Mozambique, together with questions of Transport and Commercial Traffic (*L S*, 1928, Int 3)

Revision, signed on 17 November 1934, of the Terms of the Convention between the Government of the Union of South Africa and the Government of the Portuguese Republic (*L S*, 1934, Int 7)

Amendment of 14 March 1936 of Article III of the Revised Mozambique Convention of 17 November 1934

Portugal—Southern Rhodesia

Agreement of 1 April 1934 regarding the recruitment of Native labourers in the district of Tete, Colony of Mozambique, for employment in the Colony of Southern Rhodesia

---

[1] Texts published by the International Labour Office in the *Legislative Series* are indicated by the abbreviation *L S*, followed by the year and reference number

[2] *D G* = *Diario do Governo*, first series

SOUTHERN RHODESIA—NORTHERN RHODESIA—NYASALAND

Agreement on Migrant Native Labour concluded at Salisbury, Southern Rhodesia, on 21 August 1936 (*L S*, 1936, Int 2)

NATIONAL LEGISLATION

AUSTRALIAN MANDATE

New Guinea

Native Labour Ordinance, 1935 (*L S*, 1935, L N 4), amended by Ordinances Nos 29 and 44 of 1936

Native Labour Regulations, 1936, amended by Regulations Nos 12, 19 and 31 of 1936 and 14 of 1937

Mines and Works Regulation Ordinance, 1935-36

BRITISH EMPIRE MANDATE (AUSTRALIAN ADMINISTRATION)

Nauru

Chinese and Native Labour Ordinance, 1922 (*L S*, 1922, L N 4)

Regulation of 7 February 1925 concerning the employment of Nauruans

BRITISH MANDATES

Cameroons

See under *Nigeria*

Tanganyika Territory

Master and Native Servants Ordinance (chap 51 of 1928 Edition of Laws) (*L S*, 1923, L N 5, 1926, L N 2, 1927, L N 10), amended by Ordinances Nos 24 of 1928 (*L S*, 1928, L N 5), 35 of 1931 (*L S*, 1931, L N 2) and 24 of 1932

Master and Native Servants (Form of Contract) Regulations, 1927

Master and Native Servants Order in Council, 1929, concerning right to deduct fines from wages

Master and Native Servants (Foreign Contracts of Service) Order, 1937

Togoland

See under *Gold Coast*

FRENCH MANDATES

Cameroons

PRINCIPAL TEXTS

Decree of 4 August 1922 regulating the employment of Natives in the Cameroons (*L S*, 1922, L N 1), amended by Decrees of 9 July 1925 (*L S*, 1925, L N 2) and 13 February 1926

Circular of 4 November 1925 concerning the application of the Decree of 9 July 1925

SUPPLEMENTARY TEXTS

(1) *Employment of women and children*

Decree of 14 September 1935 regulating the employment of women and children in agricultural, commercial and industrial undertakings in the Cameroons

(2) *Work-books*

Orders of 10 November 1923, 27 June 1924 and 26 March 1928 concerning work-books

(3) *Arbitration councils*

Orders of 14 March 1926, 3 December 1929 and 16 November 1935 concerning arbitration councils

(4) *Employment offices*

Order of 10 May 1937 concerning employment offices

(5) *Labour inspection*

Order of 24 February 1933 to institute a Labour Inspectorate in the Cameroons, amended by Order of 2 October 1933 (*L S*, 1933, L N 1)

Order of 15 December 1934 to repeal the Order of 24 February 1933

(6) *Indirect penal sanctions*

Decree of 6 May 1924 concerning vagrancy in the Cameroons

Circular of 1 May 1936 relating to the employment and movements of Natives

Togoland

PRINCIPAL TEXTS

Decree of 29 December 1922 regulating the employment of Natives in French Togoland (*L S*, 1922, L N 2)

Order of 19 May 1928 concerning the application of the Decree of 29 December 1922, supplemented by Order of 20 December 1929

SUPPLEMENTARY TEXTS

(1) *Health and protection*

Circular of 10 September 1924 concerning workers' health

Circular of 31 October 1924 concerning the protection of Native workers

(2) *Arbitration councils*

Orders of 25 May 1923 and 3 August 1932 establishing arbitration councils

(3) *Labour inspection*

Order of 16 November 1929 creating a post of Labour Inspector

Order of 16 November 1929 establishing an employment office

Order of 18 February 1933 reorganising the employment office and the Labour Inspectorate

(4) *Work-books*

Order of 22 November 1928 concerning work-books for Native domestic servants

(5) *Emigration*

Decree of 1 March 1927, amended by Orders of 23 May, 4 and 20 June 1927 (*L S*, 1927, L N 3)

JAPANESE MANDATE

South Sea Islands

Ordinance concerning land owned by Natives and contracts concluded with Natives, 1916, amended by Ordinance No 11 of 1931

Regulations concerning allowances to workmen and miners employed by the Mining Station of the South Seas Bureau, 1923, amended by Instructions Nos 23 of 1924, 1 of 1925, 9 of 1929 and 25 of 1930

NEW ZEALAND MANDATE

Western Samoa

Melanesian Labourers Ordinance, 1927 (*L S*, 1927, L N 7)
Labour Ordinance, 1933 (*L S*, 1933, L N 3)

UNION OF SOUTH AFRICA MANDATE

South West Africa [1]

Proclamation No 3 of 1917 relating to the control and treatment of Natives on mines and works, amended by Proclamations Nos 6 of 1924, 6 of 1925 15 of 1928, 33 of 1929, 35 of 1930, 27 of 1931 and 16 of 1935

Master and Servants Proclamation, 1920, amended by Proclamations Nos 58 of 1920, 19 of 1923 and 10 of 1927

Government Notice No 26 of 1925 publishing regulations under Proclamations Nos 3 of 1917 and 6 of 1925

Extra-territorial and Northern Natives Control Proclamation, 1935, amended by Proclamation No 29 of 1936

Government Notice No 180 of 1935, publishing regulations under the Extra-territorial and Northern Native Control Proclamation, 1935, amended by Government Notice No 159 of 1936

ANGLO-EGYPTIAN SUDAN

Proclamation of 1 June 1904 concerning the removal of Native children and servants from the Sudan, amended by Gazette Notice No 331 of 1918

Proclamation of 14 October 1920 concerning the removal of Native servants

AUSTRALIAN TERRITORY

Papua

Native Labour Ordinance, 1911-1933 (*L S*, 1927, Austral 9, 1931, Austral 12)

Native Labour Regulations, 1933, amended by Statutory Rules No 1 of 1934

BELGIAN CONGO

PRINCIPAL TEXTS

Decree of 16 March 1922 concerning contracts of employment, completed and amended by Ordinances of 11 July 1923 and 27 January 1930, Decree of 29 May 1931 and Ordinances of 10 January 1933 and 19 July 1934

Decree of 15 June 1921 respecting industrial hygiene and safety (*L S*, 1930, Bel 15), completed and amended by Ordinances of 29 July 1921 and 26 March 1927

Ordinance of 18 June 1930 to issue public administrative regulations respecting industrial hygiene and safety and to prescribe measures for carrying out contracts of employment between Natives and civilised

[1] The laws are published in the annual volume of *The Laws of South West Africa*

employers (*L S* 1930, Bel 15) amended by Ordinances of 11 June 1931, 30 December 1931, 12 February 1932, 21 April 1932, 8 September 1932, 6 August 1934, 9 May 1935 and 8 January 1936

Local Ordinances promulgated in application of the above three laws

(1) *Congo-Kasai* Ordinances of 25 September 1930, 5 November 1931, 30 April 1932 and 31 December 1935

(2) *Eastern Province* Ordinances of 15 July 1925, 27 June 1930, 1 April 1932 and 25 May 1932

(3) *Equator* Ordinance of 9 November 1931

(4) *Kantaga* Ordinance of 30 August 1932, amended by Orders of 25 November 1933, 25 September 1934 and 2 February 1935, Ordinance of 2 June 1933

SUPPLEMENTARY TEXTS

(1) *Protection of Natives*

Law of 18 October 1908 concerning protection of Natives

(2) *Labour inspection*

Ordinance of 14 November 1913 instituting industrial divisions and organising the Inspectorate of Industries

(3) *Vagrancy and mendicity*

Decree of 23 May 1896
Ordinances of 26 May 1913 and 9 March 1917

(4) *Security for permits and other obligations*

Ordinance of 15 December 1934

BRITISH COLONIES AND PROTECTORATES [1]

Bahamas

Emigrant Labourers Protection Act (chap 259 of 1929 Edition of Laws)
Labourers Abroad Protection Act (chap 260 of 1929 Edition of Laws)
Contracts of Service Act (chap 262 of 1929 Edition of Laws)

Barbados

Master and Servant (Amendment) Act, 1937

Basutoland

Proclamation No 2 *b* of 1884 establishing Rules and Regulations for Basutoland (Cape laws applied)
Basutoland Native Labour Proclamation 1907, amended by Proclamations Nos 43 of 1907, 48 of 1912, 11 of 1913 and 24 of 1927

Bechuanaland Protectorate

Bechuanaland Protectorate Native Labour Proclamation, 1907, amended by Proclamations Nos 7 of 1909 10 of 1912, 45 of 1919, 62 of 1921 and 33 of 1931
Proclamation No 36 of 1909 (Cape laws applied)

[1] The legislation for each territory is contained in the various *Revised Editions of Laws* and in subsequent annual volumes of laws

Proclamation No 8 of 1925 amending the Masters and Servants Acts, 1856 to 1889, of the Colony of the Cape of Good Hope as in force in Bechuanaland Protectorate

Bechuanaland Protectorate Native Labour (Medical Examination) Proclamation, 1935

Bechuanaland Protectorate Native Labourers (Protection) Proclamation, 1936

British Guiana

Immigration Ordinance (chap 208 of 1930 Edition of Laws)

Emigration Regulation Ordinance (chap 210 of 1930 Edition of Laws)

Employers and Servants Ordinance (chap 261 of 1930 Edition of Laws)

Aboriginal Indian Protection Ordinance (chap 262 of 1930 Edition of Laws)

British Honduras

Labour Ordinance (chap 104 of 1924 Edition of Laws)

Fraudulent Labourers (Advances) Ordinance (chap 105 of 1924 Edition of Laws)

Masters and Servants Ordinance (chap 106 of 1924 Edition of Laws)

Chicle Protection Regulations, 1936

British Solomon Islands

Solomons Labour Regulation, 1921, amended by Regulations Nos 7 of 1923, 1 of 1925 and 6 of 1934

Brunei

Labour Code, 1932 (*L S*, 1932, Brunei 1), amended by Ordinance No 2 of 1934

Ceylon

Ordinance No 11 of 1865, consolidating and amending the law relating to servants, labourers and journeymen artificers under contracts for hire and service (1923 Edition of Laws), amended by Ordinance No 27 of 1927

Ordinance No 13 of 1889, amending the law relating to Indian coolies employed on Ceylon estates (1923 Edition of Laws), amended by Ordinances Nos 27 of 1927 and 6 of 1932

Labour Ordinance, No 43 of 1921 (1923 Edition of Laws)

Labour Ordinance, No 1 of 1923 (1923 Edition of Laws)

Fiji

Masters and Servants Ordinance 1890, amended by Ordinances Nos 7 of 1906, 2 of 1907, 13 of 1910 and 16 of 1930

Emigration Ordinance 1892, amended by Ordinance No 14 of 1934

Fijian Labour Ordinance, 1895, amended by Ordinance No 17 of 1930

Gambia

Native Labour (Foreign Service) Ordinance (chap 68 of 1926 Edition of Laws)

Manual Labour (Repeal) Ordinance, 1932

Gilbert and Ellice Islands

Gilbert and Ellice Islands (Labour) Regulation, 1915, amended by Ordinances Nos 9 of 1922, 4 of 1929, 7 of 1929, 1 of 1932, 1 of 1934 and 4 of 1934

Native Passengers Ordinance, 1929, amended by Ordinance No 1 of 1936

Employees Control Ordinance, 1929

Gold Coast

Master and Servant Ordinance (chap 101 of 1928 Edition of Laws), amended by Ordinances Nos 20 of 1931, 9 of 1932 and 13 of 1934

Master and Servant Regulations (No 7 of 1921), amended by Regulations No B 9 of 1935

Ordinances Extension Ordinance, 1935

Hong Kong

Employers and Servants Ordinance, 1902, amended by Ordinance No 10 of 1932

Asiatic Emigration Ordinance, 1915

Jamaica

Breaches of Trust by Tradesmen Law (chap 320 of 1927 Edition of Laws)

Masters and Servants Law (chap 404 of 1927 Edition of Laws)

Emigrants Protection Law (chap 240 of 1927 Edition of Laws) (*L S*, 1925, Jam 1)

Kenya

Employment of Natives Ordinance (chap 139 of 1926 Edition of Laws), amended by Ordinance No 21 of 1927

Rules of 9 May 1919 and 12 July 1922 concerning contracts

Employment of Natives (Medical Inspection) Rules, 1923

Resident Labourers Ordinance, 1937

Leeward Islands

Emigrant Protection Act, 1929, amended by Act No 6 of 1931

Antigua Masters and Servants Ordinance, 1922

Dominica Masters and Servants Ordinance, 1923

Monserrat Masters and Servants Ordinance, 1922

St Christopher and Nevis Masters and Servants Ordinance, 1922

Virgin Islands Masters and Servants Ordinance, 1927

Malay States (Federated)

Labour Code (chap 154 of 1935 Edition of Laws)

Malay States (Unfederated)

Johore Labour Code (Enactment No 82 of 1935 Edition of Laws), amended by Enactment No 21 of 1936

Kedah Labour Code (Enactment No 55 of 1353 A H Edition of Laws)

Kelantan Labour Code, 1936

Perlis Labour Code, 1345 A H, amended by Enactments Nos 12 of 1350 A H and 10 of 1351 A H

Trengganu Labour Enactment, 1352 A H

Mauritius

Labour Ordinance, 1922, amended by Ordinances Nos 32 of 1922, 11 of 1924, 6 of 1933 and 14 of 1934

New Hebrides

New Hebrides Labour Regulation, 1934 (*L S*, 1934, N H 1)

Nigeria

Labour Ordinance, 1929 (*L S*, 1929, Nig 1) amended by Ordinance No 29 of 1933 (*L S*, 1933, Nig 2 (B))

Labour Regulations, 1929

North Borneo

Labour Ordinance, 1936 (1936 Editions of Laws)

Northern Rhodesia

Employment of Natives Ordinance, 1929 (chap 62 of 1930 Edition of Laws) (*L S*, 1929, N R 1), amended by Ordinances Nos 41 of 1930 (*L S* 1930, N R 3) and 8 of 1935

Employment of Natives Regulations, 1931, amended by Government Notices Nos 136 of 1931, 119 of 1936, 150 of 1936 and 17 of 1937

Nyasaland

Employment of Natives Ordinance (chap 39 of 1933 Edition of Laws)

Natives on Private Estates Ordinance (chap 43 of 1933 Edition of Laws)

Natives on Private Estates Rules (under chap 43 of 1933 Edition of Laws)

Sarawak

Order No L-3 (Labour Protection) 1935, amended by Order No L-3 A of 1936

Straits Settlements

Labour Ordinance (chap 69 of 1936 Edition of Laws)

Swaziland

Swaziland Administration Proclamation, 1907 (Transvaal laws applied)

Native Labour Regulation (Swaziland) Proclamation, 1913, amended by Proclamations Nos 30 of 1917, 22 of 1922, 9 of 1923, 12 of 1930 and 2 of 1936

Regulations of 22 September 1913 under the Native Labour Regulation (Swaziland) Proclamation, 1913

Trinidad and Tobago

Masters and Servants Ordinance (chap 152 of 1925 Edition of Laws)

Foreign Labour Contracts Ordinance (chap 155 of 1925 Edition of Laws)

Uganda

Masters and Servants Ordinance (chap 55 of 1923 Edition of Laws), amended by Ordinances Nos 15 of 1923, 19 of 1925, 1 of 1929, and 9 of 1933

Windward Islands

Grenada Emigrants Protection Ordinance, 1927, amended by Ordinance No 4 of 1930

Grenada Employers and Servants Ordinance, 1936

St Lucia Emigrants Protection Ordinance, 1928, amended by Ordinances Nos 13 of 1929 and 21 of 1931

St Lucia Emigrants Protection Ordinance (Application) Notice, 1936

St Lucia Masters and Servants Ordinance, amended by Ordinance No 5 of 1920

St Vincent Emigrants Protection Ordinance, 1927, amended by Ordinances Nos 8 of 1929 and 22 of 1931

St Vincent Notice of 4 June 1935 concerning the application of the Emigrants Protection Ordinance

St Vincent Masters and Servants Ordinance, 1920

Zanzibar

Master and Native Servants Decree (chap 129 of 1934 Edition of Laws) (*L S*, 1925, Zan 1)

FRENCH COLONIES

French Equatorial Africa

PRINCIPAL TEXTS

Decree of 7 April 1911 regulating contracts of employment in French Equatorial Africa, amended by Decrees of 15 July 1912 and 16 April 1924

Decree of 4 May 1922 respecting the labour system in French Equatorial Africa (*L S*, 1922, Fr 2)

Order of 11 February 1923 concerning the application of the Decree of 4 May 1922, amended by Orders of 20 January and 7 April 1927

Order of 21 December 1935 to lay down rules for the application of the Decree of 4 May 1922 (*L S*, 1935, Fr 16)

SUPPLEMENTARY TEXTS

(1) *Indirect penal sanctions*

Decree of 14 April 1920 and Order of 22 October 1929 concerning the embezzlement of advances

Decree of 11 April 1930 concerning vagrancy

(2) *Work-books*

Order of 3 January 1927 to institute work-books for Natives

(3) *Labour inspection*

Order of 24 July 1936 to institute a Native Labour Inspectorate

(4) *Apprenticeship*

Order of 13 September 1926 to regulate apprenticeship contracts

Order of 14 September 1928

French West Africa

GENERAL TEXTS

Order of 1 May 1911 regulating immigration in French West Africa

Decree of 29 March 1923 concerning vagrancy in French West Africa

Decree of 22 October 1925 to regulate Native Labour in French West Africa (*L S*, 1925, Fr 13), amended by Decree of 22 September 1936

Order and Instructions of 29 March 1926 to lay down rules for the administration of the Decree of 22 October 1925 (*L S*, 1926, Fr 12)

Decree of 24 April 1928 and Order of 13 May 1928 concerning the emigration and movements of Natives in French West Africa

Instructions of 1 August 1930 concerning (*a*) the Native medical relief service, (*b*) the health and sanitary protection of workers recruited by private persons

Order of 20 January 1932 instituting a Native Labour Inspectorate in French West Africa

Decree of 18 September 1936 concerning the protection of women and children in French West Africa

LOCAL ORDERS

Dahomey

Order of 17 September 1926 concerning employment offices

Order of 17 August 1927 to regulate the application of the Decree of 22 October 1925 (*L S*, 1927, Fr 14)

Order of 18 August 1927 concerning arbitration councils

French Guinea

Order of 6 August 1926 concerning arbitration councils, amended by Order of 15 May 1931

Order of 30 August 1926 to lay down rules for the application of the Decree of 22 October 1925 (*L S*, 1926, Fr 14), amended by Order of 10 April 1936

Order of 28 July 1932 concerning work-books for domestic Native servants

Order of 7 June 1934 concerning employment offices

French Sudan

Order of 17 December 1919 and Circular of 4 February 1920 concerning work-books

Order of 14 October 1926 concerning employment offices, amended by Order of 23 December 1926

Order of 1 December 1926 to regulate the engagement of Native workers, amended by Order of 23 December 1926

Order of 1 December 1926 and 21 January 1937 concerning arbitration councils

Ivory Coast

Orders of 15 November 1926, 18 January 1937 and 20 January 1937 concerning employment offices

Order of 16 March 1927 concerning work-books

Orders of 16 March 1927, 24 October 1931 and 28 December 1936 concerning arbitration councils

Order of 24 December 1935 concerning Native labour, amended by Orders of 11 April 1936 and 28 December 1936

Mauritania

Order of 6 November 1926 to lay down rules for the application of the Order of 22 October 1925

Order of 6 November 1926 concerning arbitration councils

Instruction of 11 February 1927 concerning Native labour

Niger

Orders of 17 December 1919 and 29 December 1932 concerning work-books
Order of 27 April 1935 concerning arbitration councils

Senegal

Order of 12 April 1929 in application of the Decree of 22 October 1925
Order of 15 September 1930 concerning arbitration councils

Upper Volta

Order of 3 August 1928 concerning employment offices
Order of 6 November 1928 to regulate the engagement of Native workers
Order of 6 November 1928 concerning arbitration councils

French Somaliland

Order of 12 September 1933 to institute work-books for Native workers
Decree of 22 May 1936 to regulate Native labour in French Somaliland

Madagascar

PRINCIPAL TEXTS

Decree of 22 September 1925 to regulate Native labour in the colony of Madagascar and dependencies thereof (*L S*, 1925, Fr 11), amended by the Decrees of 3 November 1928, 7 January 1929, 14 January 1936 and 8 April 1936
Orders and Circular of 30 December 1925 in application of the Decree of 22 September 1925
Decree of 10 February 1927 applying the Decree of 22 September 1925 to Malagasy workers employed on the island of La Reunion

SUPPLEMENTARY TEXTS

(1) *Contracts of employment*

Circular of 15 February 1928 concerning the registration of contracts of employment
Circular of 20 April 1928 concerning the attestation of contracts of employment
Circular of 22 November 1928 concerning labour offences
Decree of 16 February 1932 concerning share farming
Circular of 8 December 1936

(2) *Employment offices*

Decision of 29 October 1928
Order of 24 May 1933
Decree of 14 January 1936

(3) *Arbitration councils*

Orders of 8 April 1926 and 11 July 1928
Decree of 3 November 1928
Order of 27 January 1931, amended by the Order of 21 March 1931

(4) *Indirect penal sanctions*

Decree of 28 August 1921 concerning vagrancy
Circular of 5 September 1928 concerning vagrancy
Circular of 22 November 1928 concerning labour offences

Order of 30 November 1928 concerning confiscation of irregular work-books

Order of 28 July 1931 to regulate the movements of Native workers elsewhere than in their districts of origin

(5) *Emigration*

Decree of 6 May 1903 and Orders of 23 January 1927 and 10 October 1930

(6) *Immigration*

Order of 15 June 1903

French India

Decree of 23 May 1936 concerning safety and the employment of women and children

Decree of 16 April 1937 to regulate labour conditions in French India

Indo-China

GENERAL ORDERS

Order of 8 March 1910 concerning the employment of alien labour in agricultural and mining undertakings, amended by Order of 28 October 1916

Ministerial Circular of 4 October 1924 concerning the sanitary protection and welfare of emigrants

Order of the Governor-General of 13 March 1925 to institute at Haiphong a permanent Committee to inspect vessels carrying Indo-Chinese emigrants

Order of 19 July 1927 to set up a General Labour Inspectorate in French Indo-China, amended by Order of 16 January 1932

Order of the Governor-General of 25 October 1927 concerning the protection of Native and alien Asiatic labour employed under contract in agricultural, industrial and mining undertakings, amended by Orders of the Governor-General of 6 December 1927, 29 March 1929, 21 September 1935 and 29 June 1936

Order of the Governor-General of 25 October 1927 to organise a system of individual savings for Native workers employed under contract in agricultural, industrial, mining and commercial undertakings, amended by Orders of 28 June 1930, 19 December 1932, 31 January 1934 and 1 December 1934

Decree of 18 February 1928 to approve sanctions provided for by section 95 of the Order of the Governor-General of 25 October 1927

Order of the Governor-General of 10 July 1928 to institute a special contract worker's card for Natives of both sexes engaged under contract elsewhere than in their country of origin

Decree of 30 January 1929 to set up a special jurisdiction for dealing with breach of contract

Decree of 29 April 1930 to set up conciliation boards for the settlement of individual disputes between employers and workers in connection with contracts, as amended by Decrees of 18 April 1931 and 19 April 1934

Order of the Governor-General of 16 July 1930, concerning recruiters

Decree of 2 April 1932 for the settlement of collective disputes between Natives or assimilated Asiatic workers or employees and their employers, by conciliation and arbitration, amended by Decree of 23 December 1933

Decree of 2 June 1932 concerning the embezzlement of advances, bonuses on engagement or travelling expenses by Natives or assimilated Asiatics and supplementing section 408 of the Penal Code, amended by Decree of 28 January 1933

Decree of 24 January 1933 authorising officers of the Labour Inspectorate to represent workers recruited under contract in judicial proceedings

Order of 10 February 1936 to amend the regulations concerning work-books

Decree of 30 December 1936 prescribing the labour conditions of Indo-Chinese and assimilated workers

LOCAL ORDERS

Annam

Order of the Resident-in-Chief of 2 March 1928 in application of the Order of 25 October 1927 concerning the protection of labour

Order of the Governor-General of 31 March 1928 concerning the recruiting, engagement and transport of workers contracted for employment in another colony of the Indo-Chinese Union or abroad

Cambodia

Order of the Resident in-Chief of 6 November 1928 in application of the Order of 25 October 1927 concerning the protection of labour

Order of 24 November 1928

Cochin-China

Order of the Governor-General of 13 April 1909 concerning Native labour in agricultural undertakings in Cochin-China

Order of 11 November 1918 laying down rules for agricultural labour in Cochin-China, amended by the Orders of 17 January 1919, 27 December 1923 and 25 October 1927

Circular of 22 December 1927 in application of the Orders of 25 October 1927 concerning Native labour

Order of the Governor of Cochin-China of 26 June 1928 in application of the Order of 25 October 1927 concerning the protection of labour

Circular of 3 August 1932 concerning the recruiting of agricultural workers

Tonkin

Order of the Governor-General of 8 July 1927, to set up in Haiphong a service for the control of the recruiting and emigration of Native labour

Order of the Governor-General of 25 October 1927 concerning the emigration of Tonkinese workers, amended by Order of 29 August 1928

Circular of 30 November 1927 concerning the emigration of Tonkinese workers

Circular of 10 February 1928 concerning forms for the recruiting of Tonkinese workers

Order of the Resident-in-Chief in Tonkin of 30 August 1928 in application of the Orders of the Governor-General of 25 October 1927 and 29 August 1928 concerning the emigration of Tonkinese workers

Circular of 10 September 1924 relating to the personal taxes of emigrant workers recruited under contract

Circular of 8 April 1935 relating to the payment of deferred pay to repatriated contract workers

Special Regulations for Javanese Workers

Orders of 9 March 1910 and 20 May 1913 regulating the employment of alien labour in agricultural or mining undertakings, amended by Order of 28 October 1916

New Caledonia

Order of 4 October 1929 concerning the employment of Native labour of Oceanic race, amended by the Orders of 13 May 1931 and 30 September 1931

Decree of 24 December 1935 regulating immigration

Orders of 23 June 1936 to institute an immigration service and to regulate the residence of free immigrants

Order of 2 September 1936 to organise the Labour Inspectorate in New-Caledonia and dependencies thereof

Order of 7 November 1936 regulating the employment of Natives from the islands of Loyaute

French Oceania

Decree of 24 February 1920 regulating immigration in French Oceania, amended by Orders of 11 July 1925, 2 May 1928, 7 February 1930, 28 March 1930, 7 January 1931, 31 July 1931 and 18 March 1933

Order of 24 March 1924 to regulate in the French Establishments in Oceania the conditions of engagement of industrial and agricultural workers other than those subject to the immigration regulations (*L.S.*, 1924, Fr 4)

ITALIAN COLONIES

Eritrea

Section 121 of the Collection of Laws, approved by Royal Decree No 845 of 30 December 1909

Decree No 2631 of the Governor of 1 September 1916 concerning contracts of employment in the colony of Eritrea

Libya

Royal Decree No 1337 of 4 June 1936 to make applicable the laws in force in Italy concerning contracts of employment to Italian and foreign workers employed in Libya

Royal Decree No 1863 of 21 August 1936, extending to Libya the Law No 112 of 10 January 1935, concerning work-books

Somaliland

Sections 76 and 79 of the Royal Decree No 937 of 8 June 1911, approving the regulations concerning judicial organisation in Italian Somaliland

Decree No 834 of the Governor of 12 February 1912

Decree No 7475 of the Governor of 10 May 1929, to institute for the district of Genale a standard labour contract for resident Native labour and for land settlement

Decree No 8220 of the Governor of 31 July 1930 concerning the regulation of Native labour and the approval of wage rates in Italian Somaliland

LIBERIA

Act of 15 December 1930 relating to contract labour recruited for service overseas

Angola

Legislative Decree No 72 of 26 January 1929 (*B A*, p 51) to provide for the coming into force of the Native Labour Code

Legislative Decree No 73 of 26 January 1929 to repeal certain provisions as from the date of coming into force of the Native Labour Code (*B A*, p 58)

Cape Verde

Legislative Order No 3 of 24 March 1927 to put into force in the Colony of Cape Verde, with certain amendments, sections 8, 10, 11, 12, 13, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 30, 35, 36 and 41 of the Colonial Legislative Order No 108 of 19 June 1926 to approve the *modus vivendi* concerning Native labour, concluded with the Colonies of San Tome and Principe and Angola (*B C V* No 13 of 26 March 1927)

Mozambique

Order No 1180 of 4 September 1930 to approve the Regulations governing the employment of Native labour in the Colony of Mozambique (*B M*, No 20)

Territory of the Company of Mozambique

Ordinance No 1019 of 21 December 1929 concerning the recruiting of Natives (*B C M*, 1930, No 2)

Ordinance No 6216 of 16 October 1930 to adopt and declare in force in the Territory the Regulations for the employment of Natives in the Colony of Mozambique (*B C M*, No 20)

Territory of the Company of Nyasa

Decree No 3145 of 30 April 1929 to fix the date for the coming into force of Decree No 16199 (*B C N*, No 372)

Decree No 3146 of 30 April 1929 to define the powers assigned to the bodies exercising the functions allotted by the Native Labour Code (*B C N*, No 372)

Portuguese Guinea

Order No 98 of 24 December 1929 to establish which of the Decrees promulgated in the Colony with respect to the employment of Natives shall continue in force (*B G*, No 49)

San Tomé and Principe

Local Regulations of 17 March 1930 for the administration of the Native Labour Code (*B S T*, No 14)

SPANISH GUINEA [1]

Provisional Regulations for Native labour in the Spanish territories on the Gulf of Guinea, approved by Royal Order of 6 August 1906

Decree of the Governor-General of Spanish Guinea of 21 June 1927 concerning recruiting by the Official Chamber of Agriculture of Fernando Po

Decree of the Governor-General of Spanish Guinea of 23 September 1929 to authorise the conclusion of contracts of employment with Bubis

---

[1] *B O = Boletin Oficial de los Territorios Españoles del Golfo de Guinea*

(Natives of Fernando Po) during the harvest season (*B O*, No XIX, p 148)

Royal Order of 15 June 1930 concerning the recruiting of Nigerian and Angola Natives

Instructions of 29 March 1933 of the Chief of Endemic Diseases Mission in the Colony relating to sleeping-sickness

Regulations of 5 October 1933 concerning the campaign against leprosy

Decree of the Governor-General of Spanish Guinea of 27 September 1934, regulating the recruiting and employment under contract of Native workers (*B O*, No XIX, p 150)

Decree of 31 December 1934 to issue rules governing labourers' contracts entered into in the Colony on or after 1 January 1935 (*L S*, 1934, Sp 4)

Decree of the Governor-General of Spanish Guinea of 12 February 1935, to supplement the regulations concerning contracts of employment (*B O*, No IV, p 25)

Union of South Africa

Cape Masters and Servants Act, 1856, amended by Acts Nos 18 of 1873, 28 of 1874, 7 of 1875 and 30 of 1889 (Cape of Good Hope Statutes, Vols I and II)

Natal Master and (Native) Servants Act, 1894, amended by Act No 35 of 1899 (Statutes of Natal, 1845-1899, Vol II)

Orange Free State Masters and Servants Ordinance, 1904

Transvaal Master and Servants Law, 1880, amended by Act No 27 of 1909 (Statute Law of the Transvaal, Vol I)

Union Native Labour Regulation Act, 1911, amended by Act No 46 of 1937 [1]

Union Native (Urban Areas) Act, 1923, amended by Acts Nos 21 of 1928, 25 of 1930 and 46 of 1937 [1]

Proclamation No 58 of 1929 to provide penalties for the failure of Natives to take up employment after the acceptance of advances [2]

Union Native Service Contract Act, 1932 (*L S*, 1932, S A 1) [1]

Native Service Contract Regulations, 1932, as amended by Notices Nos 1151 and 1839 of 1934 [2]

Union Native Laws Amendment Act, 1937 [1]

---

[1] Acts are published in *Statutes of the Union of South Africa*

[2] Notices, etc, are published in *Regulations of the Union of South Africa*